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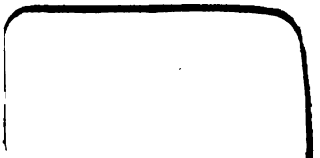

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WILLIAM MURRAY

FIRST EARL OF MANSFIELD

OB. 1793.

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LORD MANSFIELD.

Most people are interested in the things which concern themselves—their friends—their country. It is well. While selfishness is reprehensible, self-respect, or even self-love, is permissible. All are familiar with the history of our country. The story of its early struggle for independence, is ever kept fresh in mind by a national festivity. Reference to it, however, is not always refreshing—in winter.

One hundred and twelve years ago the coming June, the thirteen colonies were still regarded as being subject to the British parliament, the British courts, and the British crown.

On the throne was a narrow, passionate, uneducated, jealous, obstinate, conceited "slave of deep-rooted selfishness." His treatment of the Americans and the Irish, and his hatred of his oldest son, indicated the depravity of his nature and the tyranny of his ambition. According to Henry, Lord Brougham, "The instant that his prerogative was concerned, or his bigotry interfered with, or his will thwarted, the most unbounded pride, the most bitter animosity, the most calculating coldness of heart, the most unforgiving resentment took possession of his whole breast, and swayed it by turns."

With such qualities of head and heart, and the royal scepter in his keeping, it was simply impossible for him, like most sovereigns, to be a pliant tool in the hands of his ministry; and the only other alternative was for them in all things to be subject to his will, or by flattery and indirection, imperceptible

tibly lead and control him in such a way as to induce him to believe that he was himself the leader. Under such a master, the good natured, humorous, fluent, witty, amiable and suave Lord North, the premier at the time, with no extraordinary endowments, learning or knowledge, and opposed by such aggressive characters as Chatham, Camden, Burke and Charles James Fox, could do but little more than to submit, freely or otherwise, and execute the will and the wish of him who held the royal scepter. But that wisdom which broods over the destinies of kingdoms and principalities, was busy, even during the reign of George III, in shaping the affairs of men and nations, and hence marked it as the period during which some of the most important events in the history of the race, transpired.

At the time mentioned, there sat upon the woolsack, a plain, well-meaning, sober, honest man, with fair common sense, but probably with the least legal acquirements and the dullest intellect of any who have held the office of Lord High Chancellor during the last three hundred years. The sudden and unexpected death of the brilliant Charles Yorke, six years before, had created a vacancy. The appointment of Henry Bathurst to fill it, was the accident of an accident, coupled with a seeming necessity. All the great lawyers who were acceptable to the King, either from an aversion to such close relations as the office implied, or for other good reasons, declined; while the eminent lawyers who were anxious to be entrusted with the keeping of the great seal, were distrusted by the King and his ministers; so "the majestic sense of Thurlow," and "the skillful eloquence of Wedderburn," were obliged, like Paul at Athens, to wait for a more convenient season.

Under the circumstances, and at the suggestion of the subject of this paper, who had then, and frequently before, declined the office, it was decided to put the great seal in commission, with Henry Bathurst at the bottom of the list. This was done. Each of the three commissioners, realizing his own ignorance, agreed with his fellows, to hold his tongue during the hearing of causes, and then to consult with the Lord Chief Justice in the making of all important decisions, who, in the

meantime had consented to preside on the woolsack as speaker of the House of Lords.

No one seems to have been jealous or envious of Henry Bathurst; and so, after a year's experience with the commission, it was concluded to entrust him, under the guidance of the great Jurist, with the duties of Lord High Chancellor. This was done, and so he presided over that high court of equity, to which the thirteen colonies were subject in June, 1776. But in another part of Westminster, presiding over the Court of King's Bench, which was then the highest court of law for the thirteen colonies, was a man of different make up. He not only had the capacity to perform with consummate ability all the duties of his own great office, but was the brains behind the throne, directing and shaping the opinions of the Lord High Chancellor, the ministry and the king, without taking the responsibility of either.

Rich in natural endowments, rich in classical learning, rich in observations made, while young, in travel, rich in stores of knowledge, rich in the study of general literature, rich in professional learning, rich in the experience of twenty-six years at the bar, in the trial of causes, rich in forensic discussions in the House of Commons and the House of Lords—frequently in opposition to the greatest parliamentary debater of the century—rich in the judicial experience of twenty years of patient service upon the bench, with a charming voice and a fascinating manner, with a perspicuity of statement seldom equaled, with a natural caution which made him unusually accurate in his facts, and particularly scrupulous in the application of principles, with an equanimity of temper which was never betrayed into petulancy, with a self-control which was never lost for a moment, the Earl of Mansfield stood out as a most conspicuous personage, who received alternate praise and censure, each in every grade and variety, depending upon the ignorance, knowledge, interests, preconceived notions, prejudices, motives and principles of the writers and speakers. But the limits of this article will not permit an attempt at biography, nor extended consecutive details. Besides several biographies have been written, and all have been or may be

read. A few circumstances which may have inspired the ambition, molded the thoughts and directed the actions, and a few incidents indicative of the character of the great Jurist, are all that can properly be indulged in a paper like this.

Seventy-one years before the Declaration of Independence, and during the reign of Queen Anne, Willie Murray was born in Scone, near the banks of the Tay, in Perthshire, Scotland. There he remained, and attended school at Perth until he was thirteen years of age. While there he fed, principally, on "oatmeal porridge," supplemented. in the fishing season, by fresh salmon from his father's fishery. Of course he was a brainy boy. Willie was the eleventh child and the fourth son. With such a numerous family and shrunken possessions, his parents were obliged to practice the strictest economy, and although it was determined to liberally educate Willie, yet there was no expectation of fitting him for the bar, as that was deemed too expensive. Through the influence of an elder brother, and with the expectation that in due time he would take orders in the English church, he started from Scotland on a pony, for the purpose of attending school at Westminster, which he reached May 8, 1718, after nearly eight weeks of consecutive travel. The inspiring influence of such a trip on the back of a pony, for a boy of thirteen, may be better imagined than described. He applied himself so diligently to his books, at Westminster, that at the end of his first year he was elected "King's Scholar;"—partly, it is supposed, however, through the influence of the Bishop, by reason of his father, brothers and relatives being Jacobites.

Four years after, on completing his course at Westminster, he was found to be still the leader of his class, and the first on the list of King's scholars who were to be sent on the foundations of Christ Church College at Oxford. While he was thus attending school at Westminster he occasionally visited the high court of chancery, presided over at the time by Lord Chancellor Macclesfield, a lawyer of great ability, but who was soon after deposed by his peers, for corruption in office; and also the court of King's Bench, then presided over by Sir John Pratt, the father of the celebrated Lord Camden. In

these courts he occasionally heard arguments from two who were then comparatively young, but destined to be classed among the very greatest jurists in Great Britain, during that or any century. The one, Charles Talbot, was, ten years afterward, made Lord High Chancellor, and the other, Philip Yorke, was, at the same time, made Lord Chief Justice; and, four years later, on the death of Talbot, was made Lord High Chancellor Hardwick, and held the office for twenty years. No wonder that the arguments of such men inspired young Murray with a feeling that he had "a *calling* for the profession of the law." Besides, the atmosphere, at the time, in and about the courts of Westminster, must have been redolent with praises for ex-chancellors Cowper and Harcourt, both of whom were still living, and occasionally in parliament; and the celebrated Lord Chancellor Somers, who had only been dead for seven years; and the sterling and able Lord Chief Justice Holt, who had only been dead for thirteen years.

In the midst of such surroundings the young and eager spirit of Murray must have dreamed of like victories to be gained, and like honors to be attained. But where was the cash coming from to pay his expenses through Oxford and Lincoln's Inn? Providence usually helps those who diligently help themselves. Brooding upon the effect which his impecuniosity seemed certain to force upon his life work, he poured his supposed disappointment into the ears of at least one of his schoolfellows, by the name of Foley, with whom he had become intimate. Young Foley told the whole story to his father, who was very wealthy, and who had seen the young Scot at his house, with his son. The wealthy peer at once offered to loan young Murray the necessary funds, to be paid back, with interest, when he should be established in business. The offer was frankly accepted, and April 23, 1724, William Murray became a member of the honorable society of Lincoln's Inn, while he remained an under-graduate at Oxford. This new personal responsibility made the young man of nineteen redouble his energies, and all his studies at Oxford, thereafter, became subservient to his newly chosen profession. In June, 1727, he graduated at Oxford, and for the three succeeding

years he pursued his professional studies at Lincoln's Inn. June 24, 1730, he received his master's degree at Oxford; and November 23, 1730, was called to the bar at Lincoln's Hall. But admission to the bar is not always immediately followed by a lucrative business. Murray was no exception, for he remained two years without being retained in any case of importance. The depressing effects of holding one's self out to the world as a counselor at law, with chambers fitted up for the purpose, for two years, without money or clients, must be actually experienced in order to be realized. But without discouragement, and with an abiding confidence in the ultimate, which genius so often prompts, he relinquished no effort and lost no opportunity for broadening his knowledge and deepening his insight into the profound mysteries of English jurisprudence. Accordingly, in addition to continuing systematic study, he was attentive to the judgments delivered from time to time by Lord Chief Justice Raymond, of the King's Bench, and Lord Chancellor King, of the High Court of Chancery, who, during the time, presided, respectively, in those courts, at Westminster,—and besides, made elaborate preparations for, and generally participated in, the debating society of the place.

So confident was he of ultimate success, and so strong was his attachment to his chosen profession, that during this period of working and waiting he actually declined an offer to be made a member of Parliament. Before the end of his third year at the bar, however, his anticipations began to be realized, and he was retained, in at least one case, with the celebrated Charles Talbot as his senior and the distinguished Sir Philip Yorke as an opponent. The recent union with Scotland, by act of parliament, had given rise to a new class of cases in the House of Lords, known as Scotch appeals, and the young Scot had so thoroughly mastered the law and practice in such cases that he was fully prepared, in advance, to acquit himself with credit and ability, which he did. These cases multiplied as his fame extended.

At the end of Murray's third year at the bar, Charles Talbot was made Lord High Chancellor, and the January following,

after the most splendid procession to Westminster Hall, he was placed in the marble chair, in the court of chancery, with all the ancient solemnities, including "the ancient ceremony of the judges dancing around the coal fire," which, on that occasion, is said to have been "performed with great decency." Murray was then but twenty-eight, with a nature peculiarly susceptible to such a demonstration, and the impression upon him of such a scene in honor of one with whom he had actually been associated as counsel, may well be imagined.

But only a little more than three years had expired when Lord Talbot, who, among all the chancellors, is said to be "alone without an accuser, without an enemy, without any one, from malice or mistake, to cavil at any part of his character, conduct or demeanor," and while "apparently in the enjoyment of perfect hea th, was suddenly seized with a spasm in the heart," from which he soon died; but, "he set a pattern of dying, as he had always lived—like a Christian." Young Murray had not only argued Scotch appeals before him, but at least one case involving the law of nations.

When only thirty-two he acquired great fame in defending the city of Edinburgh against the bill introduced for its disfranchisement. About the same time he met with one of those disappointments so tender and delicate in its nature that none but poets ought to speak, and none but his own particular friend, poet and associate—Pope—shall here speak: and he only in the asking:

> "Shall one whom native learning, birth, conspire.
> To form, not to admire, but be admired,
> Sigh, while his Cloe, blind to wit and worth,
> Weds the rich dullness of some son of earth?"

But the pressure of business soon drove away his poetic melancholy, and a year after, we find him engaged in a very important and sensational trial concerning a favorite actress, and although he was only junior counsel, yet his address to the jury was such as gave him universal applause and at once placed him at the head of the English bar. His success being now assured, he, at the age of thirty three, married the daughter of an earl, and it is pleasant to note, that the auspicious union gave him domestic felicity for nearly half a century.

Four years afterward, he was made solicitor general, and held the office for twelve years, and was then promoted to the attorney generalship which he held for two years longer.

During these fourteen years, he not only tried numerous cases at the bar, but was frequently confronted by William Pitt, afterward the Earl of Chatham, who was three years his junior in age, but two years his senior in parliamentary experience, and one of the most consummate parliamentarians and debaters of the century. In comparing them, "Murray," said Lord Campbell, "unless on some very rare occasions, was found to be his match. The mellifluous tones, the conciliatory manner, the elegant action, the lucid reasoning, the varied stores of knowledge, the polished diction, the alternate appeals to the understanding and the affections, the constant self-control, which distinguished the new aspirant, divided the suffrages of the public. Even the worshipers of Pitt admitted that Murray was justly entitled to the complimentary quotation which his friends applied to him:

> "Though deep, yet clear; though gentle, yet not dull;
> Strong, without rage; without o'erflowing, full."

Another writer very accurately and very happily contrasted the two, thus: "In closeness of argument, in happiness of illustration, in copiousness and grace of diction, the oratory of Murray was unsurpassed; and, indeed, in all the qualities which conspire to form an able debater, he is allowed to have been Pitt's superior. When measures were attacked, no one was better capable of defending them; when reason was the weapon employed, none handled it with such effect; but against declamatory invective, his very temperament incapacitated him from contending with so much advantage. He was like an accomplished fencer, invulnerable to the thrusts of a small sword, but not equally able to ward off the downright stroke of a bludgeon."

After fourteen years service to the government, as King's counsel and in the House of Commons, there came a sudden vacancy in the office of Lord Chief Justice by the death of Sir Dudley Rider. Murray, sick and tired of political controversey, and especially the vituperation of Pitt, and sensible of the waning power of the administration, demanded that

office and to be made a peer. The prime minister and Lord Chancellor Hardwick, reluctant to lose his political services, hesitated; but he was inexorable and demanded compliance, and gave notice that in case of refusal he should go into retirement. The administration yielded; and Nov. 8, 1756, William Murray, in the fifty-second year of his age, took the oath of office as Lord Chief Justice of the King's Bench, and at the same time was created a peer with the title of Baron Mansfield. The appointment gave universal satisfaction to the bar. According to an ancient custom, he was now to be transferred from the honorable society of Lincoln's Inn, to Sargeant's Inn. At the head of the society of Lincoln's Inn was Hon. Charles Yorke, only thirty-three years of age, the son of the great Chancellor still occupying the woolsack, and one of the most brilliant lawyers at the bar, and he presented "to the new sergeant the votive offering of a purse of gold," and "with good taste as well as warmth, referred to the luster he had conferred upon the English bar, and the qualifications he possessed for the high office to which he was appointed by the King, with the most auspicious anticipations of the people." As a specimen of his impromptu eloquence, it may be well to quote the reply of the new Lord Chief Justice, which, according to a biographer who was present, "was delivered with the greatest grace, ease, and perspicuity," as follows:

"I am too sensible, sir, of my being undeserving of the praises which you have so elegantly bestowed upon me, to suffer commendations so delicate as yours to insinuate themselves into my mind; but I have pleasure in that kind of partiality which is the occasion of them. To deserve such praises is a worthy object of ambition, and from such a tongue flattery itself is pleasing. If I have had, in any measure, success in my profession, it is owing to the great man who presided in our highest courts of judicature the whole time I attended the bar. It was impossible to attend him, to sit under him every day, without catching some beams from his light. The disciples of Socrates, whom I will take the liberty to call the great lawyer of antiquity, since the first principles of all law are derived from his philosophy, owe their reputation to their having been the reporters of the sayings of their mas-

ter. If we can arrogate nothing to ourselves, we can boast the school we were brought up in; the scholar may glory in his master, and we may challenge past ages to show us his equal.

"My Lord Bacon had the same extent of thought, and the same strength of language and expression; but his life had a stain. My Lord Clarendon had the same ability and the same zeal for the constitution of his country; but the civil war prevented his laying deep the foundations of law, and the avocations of politics interrupted the business of the Chancellor. My Lord Somers came the nearest to his character; but his time was short, and envy and faction sullied the luster of his glory. It is the peculiar felicity of the great man I am speaking of, to have presided very nearly twenty years, and to have shone with a splendor that has risen superior to faction, and that has subdued envy.

"I did not intend to have said, I should not have said so much on this occasion, but that in this situation, with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric. For you, sir, you have given great pledges to your country; and large as the expectations of the public are concerning you, I dare say you will answer them. For the society, I shall always think myself honored by every mark of their esteem, affection, and friendship, and shall desire the continuance of it no longer than while I remain zealous for the constitution of this country, and a friend to the interests of virtue."

Four years afterward, George II. died, and his royal grandson, George III., at the age of twenty-two, ascended the throne. But Mansfield continued to preside in the court of King's Bench until in June, 1788, a period of nearly thirty-two years. Among the great events which transpired during the time was our seven years' war of the revolution, which finally resulted in that grandest consummation known in civil polity, American citizenship in dual representative governments, each with independent, but limited powers. Such being the rich legacy which we have received by inheritance, or adoption, we naturally take a lively interest, not only in those Englishmen who, like the Earl of Chatham, and his brilliant son, William Pitt, Edmund Burke, Lord Camden and Charles

James Fox, gave to the founders of our republic direct aid and comfort, but also in those who indirectly aided them by persistently adhering to that ruinous coercive policy which finally goaded the colonies into open revolt, and ended in absolute independence. Conspicuous among this latter class was Lord Chief Justice Mansfield. Thus, ten years before the Declaration of Independence, he repudiated the doctrine of the right of representation and taxation going hand in hand, on the ground that there were eight millions of people in England alone, and twelve millions in England and Ireland together, who had no votes, and hence no representation; and he joined Lord Chancellor Northington in declaring, as a matter of strict legal right, the absolute, unconditional dependence of all the British colonies. Two years later he advised harsh and vigorous measures against the members of the Massachusetts legislature, and two years before the Declaration of Independence he boldly declared, that what had just before transpired in Boston harbor, in throwing the tea overboard, was "the last overt act of High Treason, proceeding from an over lenity and want of foresight;" and that the sword having been drawn the scabbard should be thrown away. With a stubborn, bigoted king, of the character described, with a weak ministry, and a still more inefficient Lord Chancellor—Bathurst—the responsibilities of the government in cabinet counsels and parliament, as well as in the courts, seemed, by common consent, to devolve upon Mansfield; and in 1775 he proclaimed the issue in these words: "My Lords, we are reduced to the alternative of adopting coercive measures, or at once submitting to a dismemberment of the empire. Consider the question in ever so many lights, every middle way will speedily lead to either of these extremities. The supremacy of the British legislature must be complete, entire, and unconditional, or, on the other hand, the colonies must be free and independent. The claim of *non-taxation* is a renunciation of your authority. If the doctrine be just, it extends to the right of separating from you and establishing a new republic. It is to the last degree monstrous and absurd to allow that the colonists are entitled to legislate for themselves on one subject and

not on all. * * Concession now is an abdication of sovereignty." These sentiments he reiterated in December 1775 and March 1776. When attacked for inconsistency, he disclaimed responsibility and excused himself "for improperly mixing in politics." So abiding was his loyalty to the administration that he at all times seems to have assumed the wisdom of its policy, and hence concerned himself chiefly with the constitutional power of Parliament and the King to coerce the colonies.

The same doctrine of absolute dominion and complete subjection had just previously been judicially declared with the unanimous concurrence of all the judges of the King's Bench in respect to the Island of Grenada, in *Campbell v. Hall*, 1 Cowper, 204. He spoke, therefore, as a judge expounding the legal right to exercise power given by the British Constitution, to the effect that the few had the lawful right to make laws for the many, instead of the many, through representatives, making laws for themselves. It was like Ireland without Home Rule, or Wisconsin with.

It has been said that able lawyers are seldom good politicians, and that able politicians are never good lawyers. No better illustration could be found than in the case of Mansfield. Censurable as a politician and statesman, especially from the American stand-point, he is still revealed in history as one of the most distinguished and accomplished judges. He introduced several reforms in the methods of legal procedure. He found the commercial law in a chaotic state, and by judicial decisions in cases coming before him, he gradually, and without overturning any established rule, reduced the same to a system more complete and perfect than any code. This was done by evolving from the particular case in hand the general principles applicable to all similar cases. Hence he has been justly called the founder—the father of commercial law. Without slaviahly following, yet in doing this he availed himself of such light as he could gather from equity jurisprudence, the civil law and the Scotch law, as well as reason and the common law. But this broad, philosophic generalization brought down upon him severe criticism and censure, not only from non-professionals, like Junius, but from the sharp,

narrow, incisive, technical and partially educated Kenyon, who succeeded him in office, and the learned and profound, but confused and misty John Scott, afterward known as Lord Eldon, who came to the bar ten or twelve years before his resignation.

Both Scott and Kenyon were so unlike the Chief Justice in their make up as to be naturally indisposed to appreciate the great qualities for which he was distinguished; and besides, each seems to have had a personal grievance. But notwithstanding these adverse criticisms the overwhelming preponderance of the testimony is, that for broad and comprehensive learning, clearness of expression, powers of argument, force of reasoning, equanimity of temper, purity of purpose, and impartiality of judgment he has had but very few equals in any age. Thus the Earl of Chatham, who, for most of the time for thirty six years was his determined opponent, compared him with those two eminent jurists, Lord Chief Justice Holt and and Lord High Chancellor Somers, and then declared that Mansfield "excelled them both in abilities."

During his long continuance on the bench it is said that only two of his judgments were reversed, notwithstanding they were reviewable in the Exchequer Chamber as well as the House of Lords; and it is further said, that "there were in all only two cases in which his opinion was not unanimously adopted by his brethren who sat with him" on the bench.

His opinions are altogether too numerous to be noticed. A few have undoubtedly been overruled, or disapproved by subsequent decisions; but the great mass of them have been frequently sanctioned, not only in England but America. Such testimony is almost conclusive when it is remembered that his associates upon the bench included such distinguished jurists as Sir William Blackstone, Sir Edward Buller, Yates, Aston, Hewitt, Willes, Ashurst, Gross, and that very distinguished judge, Sir Eardly Wilmot, who became Chief Justice of the Common Pleas, and repeatedly declined to be made Lord High Chancellor, and would have been made Chief Justice of the King's Bench instead of Murray, had the latter been prevailed upon to remain in political life. To these eminent witnesses may be added the great names of John Dunning, a very able

lawyer, the able and brilliant Thomas Erskine, both opposed to him in politics; and Lords Brougham and Campbell, who subsequently came upon the state of action, and hence were removed from all bias and prejudice, and each of whom was an eminent jurist and made special investigations for the very purpose of determining the true merits of his character.

After convicting Junius of repeated fabrications, and total or partial ignorance of things about which he had written, Brougham drew these conclusions: "These things are far indeed from being unimportant. They affect essentially the question of judicial reputation. They show upon what kind of grounds the fabric of a great man's professional fame, as well as the purity of his moral character, were assailed by the unprincipled violence of party at the instigation of mere ignorance, skulking behind a signature made famous by epigrammatic language, and the boldness of being venturesome in the person of a printer who gained by allowing dastardly slander to act through him with a vicarious courage. They tend to reduce the estimate of such an author's value as much as they raise the reputation of those whom, from his lurking place he had assailed, and they read a memorable lesson to the people, if upon such subjects the people ever can be taught, not to repose confidence in those who are unknown, against men whose whole lives are passed in the face of open day, and under the constant scrutiny of personal responsibility. Nor let it be forgotten upon what flimsy pretenses the country was required to embark in a persecution of Lord Mansfield."

Then, after several illustrations of unfounded statements, he continues: "It may surely be said with justice that such disclosures as these, while they reduce to their true level the claims of Junius to fame, easily account for the author having died and kept his own secret. He appears to have been a person in whose bosom every fierce and malignant passion raged without the control of a sound judgment and without any kindly feeling to attemper his nature. * * No man can read a page of any letter of his without perceiving that the writer has but one way of handling every subject, and that he constructs his sentences with the sole design of saying the most bitter things he can in

the most striking way, without ever regarding in the least degree their being applicable or inapplicable to the object of the attack."

Lord Campbell, after speaking of the unfounded criticisms upon the Chief Justice as a judge, concludes: "But these delusions are no more; and Mansfield may now be compared to the unclouded majesty of Mont Blanc when the mists which for a time obscured his summit have passed away."

As a type of judicial character he has elicited like praises from Mr. Justice Story, Chancellor Kent and many other illustrious Americans, for what he did by way of systematizing the common law, which we enjoy by right of inheritance. Lacking the highest qualities of moral courage, he undoubtedly quailed in debate under the cutting sarcasm of the Earl of Chatham and even Lord Camden, and others, but he had other qualities superior to either, going to make up the complement of a great judge.

He undoubtedly had a bias against the publishers of libels, as illustrated in his sustaining the rulings of Buller against the arguments of Erskine in the celebrated case of the Dean of St. Asaph. But the law of libel was then far more stringent than it soon thereafter became by act of Parliament. He released James Somerset on *habeas corpus* for the reason that slavery was "so odious that nothing" could "be suffered to support it but positive law."—(20 Howell's St. Tr. 81-2.)

It is said that he was cold and malignant, and the fact that he remained unmoved, when in 1778, the Earl of Chatham, in attempting for the last time to speak in the House of Lords, fell senseless to the floor, is cited in support of it. He was then seventy-three years of age, and there was a crowd around Chatham which precluded access, and hence from rendering any possible assistance, even had he made the attempt, so that the mere circumstance of his immobility, hardly justifies the assumption of morbid sensibilities. Four years prior to that occurrence, while holding court in London, a young man of twenty-four, in the full uniform of the Royal Army, strolled into the room. Mansfield at once inquired his name, and ascertained it was Thomas Erskine, whom, as a Scotch boy, he had

ten years before, aided in getting the position of midshipman in the Royal Navy. He then invited him to his seat on the bench, and explained to him the salient features of the case on trial, and then invited him to dine with him at his house on the same evening. Erskine attended, and in consultation with the Chief Justice determined to become a counselor at law. Such acts could only be prompted by disinterested kindness. Four years after Erskine was admitted to the bar, and his first case was before the Lord Chief Justice, and he acquitted himself in such a way as to acquire great distinction as an advocate.

About two and a half years after his admission to the bar, he was engaged in the celebrated trial of Lord George Gordon.

The facts were peculiar. Gordon had become the leader of the "no popery" party of the time. Upon a day named, his followers were to assemble at their respective places, and march upon London and Westminster, which they did to the number of sixty thousand, to present a numerously signed petition to Parliament, in order to influence its action upon pending Catholic legislation. The result was a general drunk, ending in mobs and riots lasting some four days and nights, during which many lives were lost and much property destroyed, as graphically described by Dickens in Barnaby Rudge. Prior to that, a Catholic priest had been tried before Mansfield, and escaped punishment through a ruling of the Chief Justice. This fact exasperated the mob, and they pursued and treated the Chief Justice on his way to preside in the House of Lords at a time when Lord Chancellor Thurlow was sick; and subsequently, and at midnight, burned Lord Mansfield's dwelling house, furniture and library, for which he refused to accept any compensation from the government.

Under such circumstances, Gordon was tried before the Lord Chief Justice for high treason; and Erskine boldly referred to the fact in demonstration, that Gordon could not have had any traitorous intention against the government. After describing Mansfield, as "the awful form and figure of justice, a magistrate who had always been the friend of the Protestant dissenters," he said: "No, gentlemen, it is not credible, that a

man of noble birth, and liberal education, unless agitated by the most implacable personal resentment, which is not imputed to the prisoner, could possibly consent to the burning of the house of Lord Mansfield." These facts, and especially the acquittal of Gordon upon the trial, are at least some evidence of Mansfield's magnanimity and impartiality as a judge.

For seventeen years thereafter he continued to preside over the court of King's Bench. His health seems to have been uniformly good, and his labors immense, though less of a political character than prior to the time when Thurlow went upon the woolsack in 1778. Further details would be burdensome in a paper like this. In 1784 his wife, with whom he had lived in domestic felicity for nearly half a century, passed over to the other shore. June 4, 1778, at the age of eighty-three, he resigned the office of Lord Chief Justice.

He had already lived to see the United States, which he so strenuously sought to keep in subjection, become a free and independent confederacy; and he continued to live, until he witnessed the same states incorporated into a national government under a national constitution fully organized in all departments, with Washington fairly entered upon his second term as president of the Republic. Then, on March 20, 1793, at the advanced age of eighty-eight, he died without a groan, leaving no lineal descendants. Such is a very limited and meager sketch of the most illustrious judicial character of the eighteenth century—and perhaps of any century.

John B. Cassoday.

DIOGENES OR ANTIPATER, WHICH?

Two cases have been decided in the Northwest recently which are at once novel and interesting, and revive the old question put by Cicero, (De Officiis, book III., Ch.XXIII.,) to-wit: "If any person selling gold should suppose he was selling brass, should an honest man acquaint him that it was gold, or should he buy for a denarius what was worth a thousand denarii?" Diogenes, the Babylonian, an approved Stoic, thinks it unnecessary to correct the mistake; Antipater declares it the characteristic of an honest man. The same principle applies, of course, equally to all other commodities and articles of commerce.

Cicero, in the same work, (De Officiis,) treats quite largely of the *summum bonum* of the Stoics and of *honestum*, maintaining that men should be actuated by motives of virtue in all their walks in life and in all their dealings with one another, declaring that the base is never expedient—not even when you obtain what you think to be useful, and holding that "it should not be lawful to injure another man for the sake of one's own advantage." Cicero, while he declared and thought himself to be an eclectic in philosophy, was in most things a genuine Stoic.

Rousseau says:

"La plus sublime vertu est negative; elle nous instruit de ne jamais faire du mal a personne."

He treats of virtue, duty, expediency and discourses of many things he regards as base, evil and fraudulent, of which neither the civil law nor the common law takes any account. But the law abolishes frauds in one way, philosophers in an-

other. The law, as far as it can lay hold of them by its arm; philosophers, as far as they can check them by reason and wisdom.—(Cicero, De Officiis, book III., Ch. XVII.)

One of the Northwestern cases referred to, and the more recent one, was decided by the Supreme Court of Michigan, July 7, 1887.—(Sherwood v. Walker, 10 Western Rep. 636, S. C. 36 Alb. L. J. 243.)

It grew out of the bargain and sale of a blooded cow which was supposed by the owner to be barren, and the purchaser affected to believe so also. If barren, as supposed, the cow was useless for all purposes except beef, and was worth for that purpose no more than other beef cattle; but if she was not barren she was worth from $750 to $1,000. On the supposition that she was barren the cow was bargained at five and one-half cents per pound, for beef, at which price she was worth about $80. Before the cow was delivered to the purchaser she was found to be with calf and was valuable as a breeder, and the sellers undertook to rescind the contract of sale by refusing to deliver the cow to the purchaser. The question raised was whether the owner and vendor could rescind the contract of sale, and it was held that he could. The court said:

"It appears from the record that both parties supposed this cow was barren and would not breed, and she was sold by the pound for an insignificant sum as compared with her real value if a breeder. She was evidently sold and purchased on the relation of her value for beef, unless the plaintiff had learned of her true condition, and concealed such knowledge from the defendants. Before the plaintiff secured the possession of the animal the defendants learned that she was with calf and therefore of great value, and undertook to rescind the sale by refusing to deliver her.

"The question arises whether they had a right to do so. The circuit judge ruled that this fact did not avoid the sale, and it made no difference whether she was barren or not. I am of opinion that the court erred in this holding. I know that this is a close question, and the dividing line between the adjudicated cases is not easily discerned. But it must be considered as well settled that a party who has given an apparent consent to a contract of sale may refuse to execute it, or he may avoid it after it has been completed, if the assent was founded, or the contract made, upon the mistake of a material fact, such as the subject matter of the sale, the price, or some collateral fact materially inducing the agreement. And this can be done when the mistake is mutual."

This decision is in accord both with the precepts and the doctrine of Antipater and the established law of the land.—(See Cutts v. Guild, 57 N. Y., 229; Harvey v. Harris, 112 Mass. 32; Gardner v. Lane, 9 Allen (Mass.) 492; S. C. 12 Allen 44; Hutchmacher v. Harris, 38 Pa. St. 491; Byers v. Chapin, 28 Ohio St. 300; Gibson v. Pelkie, 37 Mich. 380; Allen v. Hammond, 36 U. S. [11 Pet.] 63-71; bk. 9, L. Ed. 33-636; 1 Benj. on Sales, Secs. 605, 606; Leake on Cont. 339; Story on Sales, 4th Ed., Secs. 148, 377.

The other case referred to comes from Wisconsin, and has been aptly designated as "the diamond case." See 36 Alb. L. J. 243. In this case, Wood v. Boynton, 64 Wis. 265; S. C. 54 Am. Rep. 610; 25 N. W. Rep. 42; a poor woman sold a stone which she had been informed was topaz, and which she believed to be topaz, to jewelers in Milwaukee for the sum of one dollar. The stone is said to have been about the size of a canary bird's egg, nearly the shape of an egg—worn pointed at one end—and was straw color or a little darker. When examined by a skillful lapidary it was ascertained that the stone was not topaz, as was supposed, but an uncut diamond, and worth from $700 to $1,000.

On learning that the stone was a diamond and not topaz, as she had supposed, Mrs. Wood tendered back to the jewelers the one dollar she had received for the stone, together with ten cents as interest, and demanded a return of the stone. The jewelers rejected the tender and refused to deliver up the stone.

In an action brought by Mrs. Wood to recover the possession of the stone it was held that the stone being open to the inspection of both parties, both being ignorant of its real nature and true value, and supposing the sum offered and received to be a fair price, and there being no showing of actual fraud on the part of the jewelers in procuring the sale made to them, that the sale could not be rescinded. The court says:

"The only question in the case is whether there was anything in the sale which entitled the vendor (the appellant) to rescind the sale and so revest the title in her. The only reasons we know of for rescinding a sale and revesting the title in the vendor so that he may maintain an action at law

for the recovery of the possession as against his vendee are (1) that the vendee was guilty of some fraud in procuring a sale to be made to him; (2) that there was a mistake made by the vendor in delivering an article sold—a mistake in fact as to the identity of the thing sold with the thing delivered upon the sale."

The Supreme Court of Michigan, however, have since discovered or found a third reason, and that is *the vendor's misapprehension as to the substance of the thing bargained and sold.* They say:

"If there is a difference or misapprehension as to the substance of the thing bargained for—if the thing actually delivered or received is different in substance from the thing bargained for and intended to be sold, then there is no contract; but if it be only a difference in some quality or accident, even though the mistake may have been the actuating motive to the purchaser or seller or both of them, yet the contract remains binding.

"The difficulty in every case is to determine whether the mistake or misapprehension is as to the substance of the whole contract, going, as it were, to the root of the matter, or only to some point, even though a material point, an error as to which does not affect the substance of the whole consideration."—(Sherwood v. Walker, (Mich.), 10 Western Rep., 636, 640. See Kennedy v. Panama, N. Z. & A. R. M. Co., L. R. 2 Q. B. 579, 587.)

If the just and equitable doctrine adhered to in Sherwood v. Walker had been followed in Wood v. Boynton, the poor woman would have had her property restored to her, or had the true value thereof paid her, and exact justice would have been done to all parties concerned. The woman bargained and sold a topaz not a diamond. She was under "a misapprehension as to the substance of the thing bargained and sold," and equity and justice as well as the rule laid down in Sherwood v. Walker, above referred to, would require that the contract be rescinded and the property returned to its rightful owner. She bargained and sold a stone supposed to be topaz for topaz, and inasmuch as the stone was not topaz but diamond, and the thing bargained and sold had no existence, there was no sale, and the delivery of the stone did not convey title.—(Silvermail v. Cole, 12 Barb., N. Y., 685; Sherman v. Barnard, 19 Barb., N. Y., 291; Suydam v. Clark, 2 Sandf, N. Y., 133; Grove v. Wooster, Lal r's Sup. 30; Hazard v. New England Ins. Co., 1 Sumn. C. C. 218; Allen v. Hammond, 36 U. S. [11 Pet.] 61-73, Conturier v. Hastie, 5 H. L. 673; Metcalf on Cont.. 30; 1 Poth. Ob. by Evans 113; 2 Kent Comm. 468.

The court in the diamond case manifestly considers the precepts and teachings of "Diogenes, the Babylonian," respecting the obligations and duties of trade, as based upon his low ideas of duty, virtue and morality. They in effect ignore alike the teachings of Christianity to "love thy neighbor as thyself," and the precepts of the golden rule of conduct in all affairs of life, to "do unto others as you would have others do unto you."

The fundamental principle involved in these cases is in the same general line with, and in moral effect very similar to a line of recent English cases. We give a few of them:

The question as to whether a cabman is guilty of larceny where a passenger, in payment of his fare, gives him a sovereign by mistake for a shilling, and both parties at the time honestly supposed the coin to be a shilling, but the cabman afterward discovers that it is a sovereign and appropriates it to his own use, was agitated in the case of the Queen v. Middleton, L. R. Q. C. C. 38, 57, (See also the Queen v. Ashwell, L. R. 16 Q. B. 190) decided in 1873, and was squarely raised in the Court of Crown Cases in the early part of 1885; but the judges of that court were so hopelessly divided, and their opinions so various, and it was so doubtful with which one, if either, the truth lay, that the case was reserved for a full bench.—(See 31 Alb. L. J. 421).

Measured by the standards of the great Roman philosophers, Diogenes, the Babylonian, would deny, and Antipater, his pupil, would affirm the cabman's guilt.

In the case of the Queen v. Ashwell, L. R. 16 Q. B. 190, one Keough intending to lend Ashwell a shilling, to be paid back when Ashwell received his wages for the week, gave him a coin which he supposed was a shilling, but which in fact was a sovereign. At the time when he received the coin Ashwell honestly supposed it to be a shilling, but after about an hour he discovered that it was a sovereign, and fraudulently appropriated it to his own use. He was held to be guilty of larceny at common law.

In the subsequent case of the Queen v. Flowers, a workman, L R 16 Q. B. 643, was by mistake paid double wages, and

he appropriated the extra and unearned money to his own use. The Court held that he had innocently received the money and that, although he had subsequently fraudulently appropriated it, he was not guilty of larceny at common law, because there was no *animus furandi* at the time of the taking.

But in Queen v. Middleton, L. R. 2 C. C. 38, where a depositor in the Post Office Savings Bank was paid eight pounds, sixteen shillings, and ten pence, by mistake, on an order to withdraw ten shillings, and he retained and appropriated to his own use the money he was not entitled to, a conviction of larceny was affirmed because the moment the defendant took up the money and went away with it he was possessed of an *animus furandi*—from the beginning he had the intention of stealing the money.

If we regard the cases from Michigan and Wisconsin from the stand-point of the heathen philosopher, in the light of the doctrine and teachings of Antipater, we must say that Sherwood sought to steal Walker's cow as much as Ashwell sought to and did steal Keough's sovereign, and that Boynton did steal the poor woman's diamond as much as Middleton stole the money of the Post Master General. But according to the precepts of Diogenes, the Babylonian, the transaction of the jeweler with the poor and needy woman was entirely legitimate, and the effort of Sherwood to obtain Walker's cow, worth $750 to $1,000, for a nominal sum—a mere trifle, was unobjectionable.

Which is right and which will you follow—Diogenes or Antipater, which?

James M. Kerr.

SUPREME COURT OF PENNSYLVANIA.

SNYDER v. CITY OF LANCASTER.

A house which is injured by the removal of the adjoining building in opening a new street, is within the constitutional provision as to consequential damages caused by the exercise of the right of eminent domain by municipal corporations.

Error to the Court of Common Pleas of Lancaster county.

Caroline Snyder was the owner of a house and lot 16 feet and 2 inches front on St. Joseph's Street, in Lancaster. Adjoining it on the north was another house and lot owned by Ambrose Worth. The City of Lancaster opened a street through these properties in such a way as to take a part of each, but, as the line of the street was not parallel to the sides of the lots, the effect of the taking was to remove the Worth house, but not directly to disturb Mrs. Snyder's, whose lot at that point was about three feet from the new street. Her house was so built, however, that the joists rested upon the wall of Worth's, and there was evidence that it would be materially injured by the removal of the latter. She appealed from the award of the viewers, on the ground that she was entitled to damages under an Act approved in 1854, P. L. 352, which provides that "if any house.... be removed or injured by the opening or extension of any street or alley as aforesaid, the said jury shall estimate the value of such building or the injury done thereto, and present a statement thereof in their report, which amount, after confirmation by the court, shall be paid out of the City Treasury."

The court, however, at the trial, charged the jury that "she will not receive any injury or sustain any damage by the opening of Filbert Street, which the City of Lancaster is liable to pay. It is only liable to pay for buildings taken or injured by the opening of streets in said city.

Her house not being taken or injured by the opening of this street, your verdict should be for the defendant." This instruction was assigned for error.

Opinion by GREEN, J. October 3, 1887.

As we understand the facts of this case the Worth house must be taken down in order to open Filbert Street. It is testified that the plaintiff's house will have no gable when the Worth house is taken down. If such is the case the plaintiff's house will certainly be injured by the removal of the Worth house, and as the removal is a necessary part of the opening of Filbert Street, we cannot avoid the conclusion that the opening of the street is, or will be, the direct cause of injury to the plaintiff's house. This being so the case comes within the operation of section 8, Article 16, of the Constitution of 1874, and should have been submitted to the jury with proper instructions.

Judgment reversed and a new venire awarded.

THE 16th AMENDMENT—SENATOR INGALLS IN "THE FORUM."

At the last session of Congress the proposed amendment to the Constitution of the United States, declaring that the right of suffrage shall not be denied or abridged on account of sex, was lost in the Senate, by a vote, including pairs, of 23 to 41. Mr. Plumb, of Kansas, said that if he had been present he would have voted yea, and two or three other Senators who were absent are understood to be in favor of it. The measure has for a number of years past, been gaining in public favor, and will undoubtedly before long pass both Houses.

In deciding as to the propriety or necessity of such action on the part of Congress, members are not called upon to pass upon the merits of the question further than to determine whether it is such an amendment as ought to be submitted for State action.

It is claimed by the advocates of the Sixteenth Amendment that inasmuch as our government is founded upon the theory that its citizens should participate generally in its management, which participation cannot be effectual without the suffrage, women, being citizens, have therefore, or should have the right of suffrage, subject to the same regulations as are made in regard to the other sex.

It is claimed further that self-protection and the protection of their property and family interests, and of the interests of their children, require that women should exercise the right

of suffrage. They point to the statutes, so unjust to them, which until a late day have been in force all over the Union and which still exist in some States, as evidence of the propriety and necessity of their being directly represented in the State legislatures.

They claim that suffrage would have an important effect upon wages and upon many other things connected with the industrial pursuits of women, and the fact that women are now freely employed in nearly every department of business, is looked upon as a result of the agitation which has been carried on for the last forty years. It is claimed that the beneficial results already attained, sufficiently justify the rightfulness of the agitation which led to such results.

Justice demands that taxation and representation should go together, and inasmuch as women are largely property holders, and are obliged to pay taxes, it is insisted that they should have a voice in the election of those who assess the property and levy the taxes, and of those who say how the taxes shall be expended.

It is claimed that the ballot is an educator, and that women are entitled to the benefit of that education as well as the other sex. That they have too long been kept in ignorance of their rights and duties as citizens, and should now be accorded all the benefits which would result from full political freedom.

That history has shown the capacity of women to govern —witness the glorious reigns of Elizabeth and of Maria Theresa, and the long and successful reign of Victoria. That if women can govern great nations, they can be trusted to govern themselves in a republic.

That the extension of the suffrage is not, upon the whole, an evil; that experience has shown the contrary. That while they as a class, keenly felt the degradation of having the suffrage extended to the negroes while it was withheld from them, yet they are willing to acknowledge the unobjectionable manner in which, upon the whole, the colored people have exercised the right which was accorded them. That even in regard to other classes of citizens, more objectionable, who already had the suffrage, since they were in the country, it is

believed that their influence upon the State as voters, is less deleterious than it would have been had they been deprived of the suffrage.

That suffrage without distinction of sex, would be a benefit to the State, inasmuch as it would bring to the administration of public affairs, the male and female element combined. That if the combination of those elements is essential in the management of a family, it is equally so in the State, which is but a family on a more extended scale.

That the women are in ordinary matters as intelligent as the men, which is universally conceded, and therefore are, or soon could become as capable of making an intelligent use of the ballot. That there would be no reason to fear that they would not make a proper use of the suffrage. Their votes would be on the side of law and order, on the side of morality, temperance, purity and justice.

The objections most frequently urged are:

That feminine delicacy and morality would be endangered by thus breaking down such an important barrier between the sexes. That to bring them together at the polls and caucuses, and in the various departments of political life, would have a corrupting effect and undermine the safeguards of female virtue.

To this it is replied that such has not in the past been the effect of bringing the sexes together. That both in the matter of education and in the various industrial pursuits expeperience has shown that upon the whole, the safeguards of virtue, instead of being weakened are strengthened by the independence and self-protecting knowledge which are thus acquired.

That politics are debasing; that the polls are not a fit place for woman, &c.

This objection is akin to the other, and in reply it is said, if the polls are not fit places they can easily be made so, or others established. It is denied that there is any thing in political life which is necessarily degrading or that there is any necessity for continuing practices which have given it that character.

That it would interfere with home duties. The reply is,

women attend church, go to fairs, theaters, &c., and to the post-office without any interference with home duties, and it is denied that going to the polls and casting a ballot, would have any different effect.

That the women do not want to vote. This is denied, and the petitions are appealed to, signed by thousands and tens of thousands of intelligent women, and the meetings attended by other tens of thousands who, for prudential reasons, do not care to sign a petition. But even if the statement were true of the majority, it is denied that this is any sufficient reason for withholding the suffrage from the minority, and as a precedent they refer to the 14th and 15th Amendments, which guarantied the suffrage to a large class who had not asked for it. It was not, as is sometimes stated, from military necessity that this was done, since these amendments were not adopted until some time after the war was over, and were for the protection of this class of citizens.

That the sexes would vote against each other, that husband would vote against wife, and wife against husband, and family discord would be the result. It is denied that such has been or would be the result, and it is claimed that any honorable man would accord to his wife as full freedom in political as he now does in religious matters.

That the women would not vote if they had the opportunity; and that only bad women would vote. Both of which objections have been completely disproved by the facts. In Wyoming, where woman suffrage has prevailed for many years, nine tenths of the women participate in the elections. In Kansas over 25,000 voted at the first municipal suffrage election.

That the respect for women would be diminished. Reply: Directly the contrary is the fact. Increase of influence very naturally commands increase of respect. Being more respected as a citizen she will not fear being less respected as a woman.

That the women are represented already. That they are represented in any proper political sense, is pointedly denied. It is argued that as well might it have been said to our forefathers in the revolution, that they were represented by the English

Parliament. A strong protest is entered against classing women politically with children, with idiots, with insane persons and with criminals, all of whom are, in the same sense represented.

That they have not the physical strength necessary to enforce the laws, and for that reason should not participate in making them. To this it is asked, in reply, "Why, then, do you concede the right of suffrage to the sick, the aged and infirm?" It is claimed that the intelligence of the country should determine its policy, while its decrees are to be enforced, when necessary, by its able-bodied citizens. That no government can long exist which has not in its citizen soldiery sufficient patriotism to enforce the laws, without inquiring by what classes of citizens they were enacted.

That women do not understand politics. To which it is replied, that the quickest way for them to learn is to place them at once under the responsibility of intelligent action.

Having thus replied to all the objections, they appeal, for a still more decisive answer, to experience.

An experience of four years in Washington Territory, the results of which are attested by the principal officials of the Territory during that time, is confidently relied upon to refute the objections and falsify the predictions against woman suffrage. The newspapers spoke favorably of the result almost without exception, and in 1885, Chief Justice Greene, of that Territory, wrote to Senator Hoar: "Not a single ill consequence as yet appears."

With still greater confidence is an appeal made to the experience of nearly eighteen years, in the Territory of Wyoming. Every governor of the Territory during that time has attested the favorable working of the system.

In 1874, Governor Campbell said: "Two years more of observation of the practical workings of the system have only served to deepen my conviction that what we, in this Territory have done, has been well done; and that our system of impartial suffrage is an unqualified success."

In 1876, Governor Thayer said: "Woman suffrage has now been in practical operation in our Territory for six years, and has during the time increased in popularity and in the confi-

dence of the people."

In 1882, Governor Hoyt said: "Under it we have better laws, better officers, better institutions, better morals, and a higher social condition in general than could otherwise exist. Not one of the predicted evils, such as loss of native delicacy and disturbance of home relations, has followed in its train."

Governor Warren, in 1885, wrote: "While I had no hand in passing the act which gave to woman this privilege, I must acknowledge its success now after fifteen years trial. No attempt to repeal the law has been made in ten years, and none is contemplated."

The foregoing testimony has more weight from the fact that the governors of the Territories are appointed by the President, and these governors are not, therefore, dependent upon the votes of the women of Wyoming.

School suffrage is exercised by women in twelve States, and voting on liquor licenses in two States, and there has been no complaint of any improper exercise of this partial suffrage by women.

In England, for fifteen years past, single women and widows have had full municipal suffrage upon the same terms as men. In all the recent debates in Parliament over full suffrage for woman the friends of the measure have claimed that municipal suffrage has worked well, and its opponents have not denied it. Mr. Gladstone said the women had exercised municipal suffrage "without detriment and with great advantage." The same right of municipal suffrage was afterward extended to the women of Scotland; also to those of Ontario and Nova Scotia. And thus the women of Great Britian are gradually recovering their old common law right of suffrage, which they exercised up to about two hundred years ago, upon the same terms as men (except that the vote of the married woman must be cast by her husband) and which they continued to exercise occasionally up to 1835.

Over one hundred women are representing their own sex on the school boards of Massachusetts.

In Kansas, municipal suffrage was extended to women by the last Legislature, and though reports of disorder at the

polls were at first sent abroad and industriously circulated, later and more trustworthy information shows that those reports were manufactured for effect, having no foundation in truth. The election passed off quietly, and the votes of the women were cast for law and order, and in favor of a better condition of society.

From this review it will be sufficiently evident that there is nothing in woman suffrage so alarming that the most conservative citizen need object to the submission of a Constitutional amendment to the consideration of the people of the various States, abolishing the distinction of sex in the exercise of the right of suffrage.

The amendment would no doubt be a long time pending before it would be ratified by three fourths of the States, and even after it shall have been ratified by some of the States it will probably be held, should the question arise, that any State which has ratified may withdraw its ratification at any time before three fourths have ratified. [See the October number of the LAW TIMES, in which this subject is fully discussed.]

In the meantime some of the States will have adopted woman suffrage by legislative action, and the States before which the amendment is pending, and whose line of policy may not be definitely settled, will have the example of these States before them, can observe the beneficial or deleterious working of the system, and act accordingly.

Senator Ingalls, who voted against the Amendment, felt under the necessity of vindicating his action. Accordingly he has made some speeches for that purpose in Kansas, and more recently has written an elaborate argument upon the subject, which has been published in the "Forum," and read quite extensively.

All that the Senator has said in that article against suffrage as a right, and in condemnation of the principle that governments rest upon the consent of the governed, is a direct attack upon doctrines which led to our revolution—doctrines which were relied upon to justify the revolutionary war, and which, after the revolution had been successful, were made the foundation principles upon which the national government was con-

structed. We do not think the people can be rightfully called upon at this late day to reconsider the principles which lie at the foundation of the government, merely upon the suggestion that those who formed the government and set it in operation borrowed their ideas of the social contract from Rousseau and the French philosophers, and that their dreamy imaginations were "captivated by their vague phrases and imperfect generalizations."

Their heads were not less cool than the Senator's, and their generalizations surely were not more imperfect than his. They would scarcely have made such a blunder as to say "the Fifteenth Amendment was as much a war measure as the draft or the legal tender act," when that Amendment was not proposed until four years after the war was over, and was a year later adopted as an act of justice to the colored race. Nor would they, even in the heat of argument, have made such a blunder as to speak repeatedly of States being compelled to confer suffrage upon women "under penalty of forfeiting representation in Congress and the Electoral College," when representation in Congress and in the Electoral College is based upon numbers of population, and not upon numbers of voters. When the slaves were made free, they were all counted in the numbers of population upon which representation was based, while as slaves but three fifths of them had been counted. Hence the representation of the former slave States was increased. But it was the Thirteenth and not the Fifteenth Amendment that increased the representation. The giving of suffrage to the former slaves had nothing to do with it. Yet the Senator, either blunderingly or craftily, would make the readers of the "Forum" believe that the extension of the suffrage to the women in any of the States would increase the representation of those States in Congress and in the Electoral College, and that such States as might refuse to take such action would thereby be placed at a disadvantage.

Some of the arguments of Senator Ingalls have been already considered in the foregoing general view of the question. One or two points remain to be noticed.

Speaking of the illiteracy of the young population, he says:

"By the statistics of the tenth census we are informed that the colored males in the United States above the age of twenty-one who were unable to write, numbered 1,022,151, or 68 7-10 per cent. of the entire class. The white males similarly disqualified were 886,659, or 7 8-10 per cent. of the voting population. It is an appalling reflection that, in a government theoretically based upon intelligent citizenship such an enormous proportion of the electors are destitute of the rudiments of education. The adoption of the proposed Sixteenth Amendment would add to this stupendous mass of illiteracy, colored females 1,125,749, or 77 6-10 per cent. of those who would be enfranchised, and white females 1,169,804, being 11 per cent. of those who would be entitled to the ballot; a grand total of nearly twenty-three hundred thousand illiterate and disqualified voters, in addition to the existing millions whose condition is a confessed menace to the perpetuity and stability of free popular government."

This is all true, but, in the language of the Senator in another portion of his article, it is "not the whole truth and nothing but the truth." He overlooks entirely or withholds the fact that while the Amendment would enfranchise the 77 6-10 per cent. of colored females and the 11 per cent. of white females who cannot write, it would at the same time enfranchise not only the other 22 4-10 per cent. of colored females, but the other 89 per cent. of white females also; so that while there would be added, as he says, nearly twenty-three hundred thousand illiterate voters, there would at the same time be added nearly ten millions to the intelligent voting classes of the country. While the proportion of ignorant to educated voters would be substantially the same as now, the proportion of criminal to non-criminal voters would be far less; since it is notorious that the great body of the criminals are from the male population.

The Senator argues that we have too much suffrage, and preaches a crusade against it; but he is careful, in speaking of negro suffrage, not to specify wherein it has been wrongly exercised. He alleges that the suffrage is not conceded to the colored man, thus confounding a violation of the right of suffrage, with an abuse in its exercise. If suffrage is withheld from the colored man in the south, the country holds the remedy in its own hands. It has only to enforce the penalty provided in the second section of the Fourteenth Amendment, and deprive the States which abridge the suffrage of a corre-

sponding representation. And as to the foreigners whose ingress he considers so alarming, while the emigration to this country of so many of the worst class is to be deplored, yet the number of those who become voters, compared with the number of native born citizens who are constantly becoming voters, is very small, and the proportion annually becoming less.

The Senator expatiates upon the anomalous case of Utah, where the women failed to rise at once out of and above the social slavery in which they were held, and set themselves free by the ballot. Women who, for the most part were brought here from a foreign country, were entirely dependent upon the other sex, and would have been voting themselves out of a livelihood. He says the silence of the champions of the Sixteenth Amendment concerning this matter "is like the stillness of the sepulcher."

But the Senator maintains a silence equally as ominous upon another phase of the subject. He dilates upon the fact that the women of Massachusetts did not rush forward to avail themselves of a piece of school suffrage that was offered them —a piece comparatively so insignificant that it was little better than an insult, but concerning the facts that in Washington Territory, the women had very generally voted—that in Wyoming nearly all the women vote, at some elections nearly nine tenths of them, and often a larger proportion than usually vote of those qualified—that in his own State of Kansas over twenty-five thousand women voted at the first election after municipal suffrage had been conceded to them—concerning these facts so important in determining whether women want to vote, and whether they would vote if they had the chance, the Senator maintains a silence which "is like the stillness of the sepulcher."

Since writing the article, the Senator, apparently alarmed at his own boldness, and not entirely certain of being able to carry forward to a successful issue the campaign so vigorously opened, has been making some concessions, and with an adroitness known only to political statesmen, has been getting partly upon the other side. He not only concedes the entire equality

of woman, morally and intellectually, and the capability of most women to exercise the suffrage for the good of the country, but, if we are correctly informed, he concedes that it is a righteous reform, and that its success is only a matter of time.

The women, however, cannot clearly see how such concessions are consistent with his previous declarations; and they insist that nothing less than a complete conversion and active co-operation can atone for the political heresies which he has been spreading broadcast throughout the land.

Charles B. Waite.

NOTE.—In the July number of the LAW TIMES was an article entitled "Suffrage a Right of Citizenship;" in which it was shown that Justice Washington of the Circuit Court of the United States had held in the case of Corfield v. Coryell that suffrage was one of the privileges and immunities of citizens which must not be abridged in any State, and that this opinion had been approved by Chancellor Kent, he having embodied it in his Commentaries as an exposition of that provision of the Constitution.

It was shown, also, that in the case of Minor v. Happersett, the Supreme Court of the United States had not decided differently. The Court did not in that case define the privileges and immunities of citizenship, and say that suffrage was not one of them, but the decision was based upon the ground that the Constitution did not confer the right of suffrage upon any one.

The distinction is an important and vital one. Because the people do not get their rights from the Constitution, though they may look to it for protection in the enjoyment of those rights. As pertinent to this matter we give a correspondence in which the question was considered, and a construction placed upon it by one of the departments of the government.

It appears that on the 21st of July last, Fred E. White, of Creighton, Nebraska, addressed to the Secretary of the Interior a letter in regard to certain Santee Indians voting at the election in Knox County, involving the location of the county seat. The writer expressed the hope that if it should be held that they were not clothed with the right to vote, prompt and necessary steps would be taken to prevent he "Indians non-citizens from voting," &c.

In reply the acting Commissioner calls attention to paragraph four, Article VI. of the treaty between the United States and different tribes of Sioux Indians, concluded April 29, 1868, (15 Stats. p. 607), which provides

for the issuing of patents to individual Indians, and which concludes as follows:

"And any Indian or Indians receiving a patent for land under the foregoing provisions, shall thereby and from thenceforth become and be a citizen of the United States, and be entitled to all the privileges and immunities of such citizens, and shall at the same time retain all his rights to benefits accruing to Indians under this treaty."

The Commissioner says:

"The land having been allotted to Santee Indians, and patents having issued therefor, they are therefore citizens of the United States, and are 'entitled to all the privileges and immunities of such citizens' and consequently vested with all the rights of suffrage to which any citizen of the United States is entitled."

The Commissioner calls attention, also, to the fact that by the terms of the Act providing for the allotment of lands in severalty to Indians, approved Feb. 8. 1887, Indians to whom allotments should have been made under the provision of the Act, or under any law or treaty, and Indians who had voluntarily taken up their residence separate and apart from any tribe, and had adopted the habits of civilized life, were declared citizens of the United States, and "entitled to all the rights, privileges and immunities of such citizens."

A statute of the State of Nebraska is then referred to, which declares that every male person of the age of twenty-one years or upwards, who should have resided in the State, county, and precinct or ward for the time specified, and who should belong to certain classes named, the first of which was "citizens of the United States," should be an elector.

The opinion concludes as follows:

"In view of the fact that such of the Santee Indians as have received patents for their lands are citizens of the United States, under treaty provisions as well as by Congressional action, and the further fact that the statute of the State of Nebraska clothes citizens of the United States with the right to exercise the privilege of voting within its borders, and also that the Santee Indians have filled the other requirements of the statute by having been long residents of the State, it is my opinion that the said Indians have the right to vote in the said State on any and all questions upon which any other citizen of the United States, or an elector of that State, has a right to vote. This question however, is one which can be determined only by the proper court."

In connection with the same subject it is worthy of note that at the State Republican Convention held in Iowa on the 24th of August last, the following resolution was adopted as one of the planks in the party platform:

"We deny that the suffrage is purely a local question for each State to regulate in whole, or suppress in part, as it chooses. The suppression of the votes of the black men in the South is not only a wrong to them, it is also in a national sense, in the election of Congress, and the election is a bold and successful method to make one vote in the South count for as much as two in the North, therefore a wrong which reaches into every neighborhood and to every voter in the Union. It is also used to degrade the negroes of the South into a servile form of cheap labor with which free labor everywhere must soon be brought into competition."

The doctrine that suffrage is a right of citizenship under the Federal Constitution, of which the citizen cannot, under pretence of regulation, be deprived without just cause, and except for reasons impartial in their application, is gaining ground, and is destined to prevail.

But the doctrine should be applied to other citizens as well as to Indians and negroes.

Suffrage is the mode in which the citizen participates in the government. If it is a privilege merely, who has the right to grant it? And whence originated such right? If those now exercising the suffrage hold it as a mere privilege, then they may at any time be deprived of it. Suffrage is by some admitted to be a right of the people as a whole, while it is denied to be a right of the individual. But who are the people who are thus entitled? If the term does not include all classes of citizens, under no natural or criminal disability, then whom does it include? If it includes some one class, subject to such disabilities, and not other classes subject to the same disabilities, then our government is not a republic but an aristocracy What class of citizens has a right to exclude all other classes? And whence did the favored class obtain this right of exclusion?

Of course there must be some legislative rules and regulations for the exercise of the right, but these must not be carried so far as arbitrarily to deny the right itself to the citizen. What is an arbitrary denial? Let us see. In regulating the suffrage, it becomes necessary to declare certain disabilities, for reasons founded in the nature of things. For instance minority. It is necessary to fix a time when the incapacity for want of sufficient age may be considered at an end. But the remainder of the community retain the right of suffrage and the privilege of exercising the right.

The right to exclude for crime is conceded, but this when examined, so far from being in conflict with the doctrine here contended for, will be found to be confirmatory of it.

"All regulations of the elective franchise," says Judge Cooley, "must be reasonable, uniform and impartial; they must not have for their purpose

directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do they must be declared void."—(Cooley's Constitutional Limitations, p. 602.)

And in reply to objections which had been made to certain registry laws on the ground that they violated the foregoing rule, he says:

"The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised."—(Ibid. p. 602.)

The arbitrary exclusion of a whole class cannot in any just sense of the term be called a regulation.

The right to vote is not derived from the legislature. It was in the people before the legislature was elected; and had been recognized and regulated by previous legislatures and Constitutional conventions. No legislative assembly or Constitutional convention in this country can be specified previous to which the right of suffrage did not exist. In fact it was by the exercise of that very right that such assembly or convention was called into existence.

If suffrage is a mere privilege, at the discretion of the legislature, then one legislature can deny it to one class of citizens, the next legislature to another, and so on, until our form of government shall have become completely subverted.

Madison declared that it was by a gradual abridgement of the right of suffrage that aristocracies had been built on the ruins of popular forms of government.—(Elliott's Debates, Vol. 5, p. 388.)

The fathers of the Republic looked upon suffrage as a right. Madison called the right of suffrage one of the fundamental articles of a republican government, and thought it ought not to be left to be regulated by the legislature.—(Elliot's Debates, Vol. 5. p. 388.) Jefferson said, "Let every man who fights or pays, exercise his just and equal rights in election."

Payne said, "The right of voting for representatives is the primary right by which other rights are protected."

Benjamin Franklin said:

"Liberty or Freedom consists in having an actual share in the appointment of those who frame the laws." * * "They who have no voice nor vote in the electing of representatives do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives."—(Franklin's Works, vol. 2, p. 372.)

Hamilton said:

"A share in the sovereignty of the State, which is exercised by the citizens at large in voting at elections, is one of the most important rights of

the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist as a free people."—(Hamilton's Works, vol. 2, p. 315.)

The States have full power to regulate the suffrage, so long as they keep within the limits of a reasonable regulation, and do not by an unreasonable one abridge the suffrage as one of the privileges and immunities of citizenship, still, so far as Congress is concerned, the Constitution of the United States has itself regulated the question of suffrage, by prescribing the qualifications of voters. [See Art. 1, Sec. 2.] It is true that those qualifications are to be the same as those of voters for the most numerous branch of the State legislature; but that makes no difference. The point is that the Constitution has taken jurisdiction of the question. If it can make the qualifications of voters for Congressmen the same as those of voters for members of the State legislature, then it could also have made them different. By prescribing what the qualifications shall be, it has shown that the United States has voters of its own.

By the very act of forming a government our fathers became citizens of the government they were forming, and as such citizens had a right to participate in that government. But this participation could only be made effectual in one way; by the exercise of the right of suffrage. Thus voting and citizenship became inseparable. And because they did not immediately admit all citizens to share the suffrage with them, it does not follow, that with them it was not an attribute of citizenship, or that they had a right arbitrarily, or without any good and sufficient reason, to exclude other citizens from the right which they themselves possessed.

They previously had been and still were citizens of the States in which they resided, and as such citizens they there had the right of suffrage. They had not derived it from the State legislatures nor from the State constitutions. The State constitutions are not grants of power or of rights, but mere limitations upon the power of the State legislatures; and all declarations in the State constitutions of the right of suffrage in certain citizens or classes of citizens must be looked upon as equivalent to prohibiting the legislature from preventing such citizens or classes of citizens from voting. It is equivalent to saying that the legislatures may in the exercise of a sound discretion, in regulating the suffrage, exclude, for good reasons, some citizens, (not necessarily all those not mentioned), but that they must not exclude the citizens or classes of citizens specified in the constitutions of their States.

The fallacy consists in assuming that the State constitutions are the

sources of the right of suffrage. Suppose all the State constitutions had been silent upon the subject? Would not the State legislatures still have had the power to regulate the elective franchise as a right inherent in the people? Would the entire machinery of government have been suspended, on the ground that there had been a failure to furnish the necessary motive power for putting it into operation?

Having thus the right of suffrage in the States where they resided, a right not dependent upon any State legislature or constitution, but superior to all of them, when, by virtue of their own act, the people who framed the Federal Constitution became citizens of the United States they at once had the right of voting for members of the national legislature; a right that could not be taken away by any legislation, State or national.

A State legislature has not such an arbitrary control over the elective franchise that it can rightfully or legally exclude an entire class of citizens from the suffrage so effectually that they can never attain it. The foreigner can become a voter by being naturalized; the infant can become a voter when he arrives at the age of twenty-one. Even a criminal can become a voter by being pardoned and restored to his civil and political rights. But the class of citizens to which the complainant in Minor v. Happersett belonged, could not, under the construction which has prevailed, by any lapse of time or by any act of their own become voters. To justify such an exclusion as this, it would have been necessary to decide not only that the Constitution did not confer the right of suffrage, but that there was no such right whatever in the citizen. The Supreme Court would have hesitated to say that the people who formed this government had no right to participate in it, except as such right should be granted to them by their State legislatures, or by the constitutions which they had framed.

The fact is, that the right of suffrage is, in the last analysis, the principle which lies at the foundation of our government. It is the motive power in its administration, and is necessary to its perpetuity. Any extension of it may be made with safety, especially now since those extensions which may have appeared of doubtful expediency have already been made, while any restriction of it, by denying it to any class of citizens, would be in the direction of an aristocracy, and could only be justified by crime or mental incapacity.

ETHICS OF THE BAR.

We presume our readers will not require us to explain in detail the meaning of the term "an honest lawyer." It has been too long in use in common parlance, "in our first families," to be consigned to the land of myths and romance; too long in the parlor and drawing-room as an honored guest, to be kicked out of the back door as an impostor. It is neither a vaporous negative nor unknown quantity. It is a commodity in which we all have had traffic, and about which we can speak from pleasant, personal experience. The power of association of objects and ideas in the human mind is very strong. We hear a low whistle on a still night, just at the bend of the road, skirted on one side by heavy timber and thick underbrush, and on the other, looking out on the peaceful graveyard, at the exact spot where Paul Brandon was murdered on the night of February 1, 1866, and by common consent we choose to be uncomfortable. On the other hand, the daily inter-communication of the great masses of men of our large cities, rustic villages and thrifty country places, with the honest toiler of the legal profession, fits the human mind by common consent, naturally, as the snowflakes fall upon and fit into the bosom of mother earth, to adopt such endearing words as "an honest lawyer."

Life, property and personal liberty must be protected and crime and injustice prevented, either through the agency of lynch law, bordering on mob violence, or through the interposition of mechanically organized legal tribunals.

Lynch law as . system is a failure; because passion supplants prudence; prejudice dominates reason. Imagination comes first, fact second, truth last. Spite, personal interest, revenge, like angry flames in a whirlwind, consume man's dearest, richest treasures, leaving naught but the gray, smoldering ashes—the black, blistered walls of ruin. Impulse is an unstable court, with a dangerous jury, treacherous witnesses and dreaded executioner.

History furnishes overwhelming and revolting proofs of the hardships, crimes and outrages committed by men "taking the law in their own hands."

Lynch law, executed by a wild, excited, prejudiced, inflamed and passionate mob is a failure, and worse than a failure; it is too dark and dangerous for the darkest age or the most barbarous nations. Stimulated by baseless suspicion, guided by false rumor, directed by distorted imagination, incensed by passion, and void of reason, truth, unseen, is trampled under foot. The innocent suffer, the guilty escape, justice is cheated.

All civilized countries, ir acknowledgment of the inability of mob law to do justice as between man and man, to protect the innocent and punish the guilty, to preserve life, home and property, to give confidence, stability and perpetuity in and to human rights and human institutions, have wisely adopted codes of laws for the punishment of the guilty and the protection of the innocent, at the same time specifying and marking out the mode whereby such laws shall be invoked, interpreted and administered.

Whether all laws so enacted are the wisest and best that can be known or conceived, or whether the modes whereby they are interpreted and enforced are perfect, are not questions for us here to consider. Law, like plants, like our bodies, like all animate nature, like all literature, science and theology, is qualifiedly a thing of growth and decay, the qualification being that in law there are certain broad and universal and immutable truths, principles and axioms applicable tc all ages and all conditions of man; while aside from this, as society advances, as human institutions, countries, states and municipalities change, as commerce, agriculture and invention broaden, as

men group and arrange themselves together under new and varied personal and property interests, the laws governing men under all these new, altered and multifarious relations must and do necessarily undergo a corresponding change—thus keeping pace with the age, and subserving the wants of man. These are facts, simple and plain, about which there can be no dispute.

We live under and are regulated by law. The law of our land, be the same good or bad, whatever may be its defects, is better than no law.

A few moments reflection will certainly convince the most casual observer that the means of interpreting and administering all the laws necessary to regulate men in their varied relations with each other, and the means of arriving at all the facts necessary to be known in any given case, for a just and faithful execution of those laws, brings us face to face with a grave subject, and one as grand as grave. In this regard we can indulge in nothing trivial, visionary, or speculative. We are dealing with human life, liberty and property.

In adjusting matters of such vital importance as the poise and swing of the scales of justice, the incrustations of error must be broken off, and brushed from the enduring and gleaming mirror of truth, whose reflection alone portrays the faithful picture. There is no sunlight so potent, so salutary, as the sunlight of truth. In our courts of justice, in theory always, in practice generally, the chief object is to get at the truth. The truth as to the facts surrounding a given transaction. The truth as to a full and fair interpretation and administration of the law, applicable to such facts. A court of justice is necessarily a wonderfully constructed machine, in which court, jury, witness, lawyer, statute, thought and brain are the wheels, cogs, belts, and power. As the power acts on and utilizes the machinery through the great connecting belts and shafts, so the court and jury obtain, arrange and digest their facts, and pick out and fit thereto, the corresponding law through the instrumentality and inspiration of the advocate. He is a necessary part of this legal machine. Without him, by what means is this great machine to be put and kept in motion?

Who is to formulate charges and make up the great issues to be tried? Who to elicit the truth as to fact, the doctrine as to law, and portray the same vividly to this great arbiter of human life, liberty and property, the court? Take from this legal tribunal the advocate and the inspiration of the court is gone; the means of ascertaining the facts (and consequently the truth) is cut off, while the grand doctrines enacted by wise law makers and expounded by learned jurists, built on human experience and common justice for the protection of the good and the punishment of the bad, slumber in obscurity, unknown or forgotten among the musty tomes of legal antiquity.

Absolute, eternal truth, we erring mortals can not always hope for; but onward we may plod, upward we may climb, with the abiding assurance, that every step toward her domain, is a step toward safety, justice, law and human happiness.

The student ponders over the abstruse proposition, counts not the flying hours, thinks not of ease, strains the mind to its utmost tension, and holds it there till the very body quivers from the inward struggle. When the demonstration is completed, he may never appropriate it entire in his after life, yet the mental energy, the power of concentration thus acquired, he may use a thousand times. In like manner, as the mind is strengthened by close application, is it quickened by keen, stirring, critical debate and antagonism. The temper of the metal is there tested. The old Damascus blade, the cold, clear steel, welded and wrought upon by the mighty hand of Vulcan, twists the edge, and shatters the sword-blade of mingled metal.

From the heat, the crucible, the welding cometh the steel; and from thence also cometh the dross, and in a safe selection of one from the other, in their present conditions, separated and apart, a child is wiser than a Solomon, groping amid the original sand, rock and mud.

In the legal forum sit the court and jury, the calm, uninterested spectators; before them appear witnesses, who, under the solemnity of an oath, present in a clear, graphic and comprehensive way all the facts relating to and surrounding a given transaction. This presentation is under the guidance of

counsel for the respective parties litigant, through whose skill and experience all the material facts are presented, while those immaterial and tending to needlessly confuse and overtax the minds of court and jury, are wisely left out. Each party litigant, under leadership of respective counsel, with great pains and clearness, presents the facts pro and con, so that when the case is in, the court or jury, or both, may compare one presentation with another, may set off one against the other; may examine both in the light of comparison, just as an artist may compare two paintings, or as the merchant may compare two pieces of broadcloth. As jewels may be handled, weighed and inspected under a powerful glass and their value thereby determined, so may testimony be scrutinized in the clear light of all the surrounding circumstances, and then measured by the rules of law, weighed in the scales of justice and its value fixed.

The memory of the witness is tested, his conscience is probed, his motives disclosed, the reasonableness of his statements noted. With such a presentation of the facts to the court by counsel, in a clear and logical form, with all the surrounding circumstances, in the light of comparison, attended by legal presumptions and human probabilities, the facts brought to light, the law expounded, the manners of the witnesses noted; what must be the inevitable effect on the minds of these unbiased spectators and arbiters, the court and jury?

Is it not to them an inspiration, a revelation of the truth, a preparation of their minds to render a true verdict—a righteous judgment? Certainly it is.

If in one case, shrouded in mystery and befogged with doubt, such proceedings are useful and manifestly tend to expose crime and injury, and establish truth and justice, then they are useful in all cases.

The question is not whether courts and juries do not sometimes make mistakes. That is admitted. "To err is human."

Unscrupulous attorneys and perjured witnesses often cheat justice. The sophistry and eloquence of the advocate sometimes sport with human passion, blind the eye to truth and hush the voice of conscience, but the question is: What is accomplished by this great machine, the court? We answer:

it puts in use every known means to ascertain and establish the truth beyond successful contradiction. It punishes the guilty and vindicates the innocent. It protects the weak from the oppressions of the strong. It guards the property and reputation of every man, woman and child. It throws a safeguard around every household. It watches at every fireside. It gives confidence, value and stability to property. It enters into every counting room, and is a party to every bargain. It bids us close our eyes at night in refreshing and undisturbed slumber. At all times, under all circumstances we are made conscious of the mighty, protecting arm of the court.

Why argue that this great machine, the court, should go on? What matter if now and then a cog is broken or a belt runs off? Like all other human inventions it is imperfect, still it is of priceless value.

By what means is this useful machine to be kept in motion except by the belting and shafting of the legal profession? The court has sometimes been vulgarly called a "mill." If that be so it must "grind all grists," big and little, good and bad. The machinery must all be intact and kept running. One of the conditions on which this mill runs is, that the lawyer does his part. By this test his importance in the legal tribunal is fixed beyond question. He must do his part. What is the part incumbent on him to perform, by virtue of the relations he sustains to the court and the community? Every man charged with crime or having a legal difference or dispute with another, is entitled to his "day in court." The law pledges to him a fair and impartial trial. The lawyer, by his solemn oath, is bound to see that this covenant is kept. That the trial, of whatever form or character, or whatever may be its merits or demerits, will not be "fair and impartial" except upon a full investigation of all the facts and a clear interpretation of the law as before shown, is self-evident. In order that the trial be fair and impartial and the decision just, the truth as to all the facts and sound doctrine as to law, must enlighten the understanding and overcome prejudice and passion, without which the law becomes a sword rather than a shield. So that it necessarily follows that the honest lawyer in the

performance of his sworn duty, must stand ready at all times to perform his part in this legal tribunal, searching after the truth and passing his judgment as truth dictates. In doing less than this he is untrue to his trust, and his unworthy example, if followed by all his legal brethren, would put an end to the courts, to law and order, and leave every man his own lawyer, judge, jury and executioner. The object for which counsel is desired is to aid in unfolding and interpreting truth's mysterious teachings. Let him open the book of truth and study well and faithfully expound its teachings. He will find "truth stranger than fiction" and of infinite value.

Therein he will find no exhortation to corrupt courts, bribe juries or misstate law or fact; but standing on a high moral and intellectual plain he may manfully and fearlessly do his simple duty, and be a blessing to mankind.

People are so easily and frequently misled and deceived by appearances and impressions, by exaggerated reports, prejudice and passion, that we must bring into requisition something more reliable and infallible on which to stake human life, liberty and the enjoyment of the fruits of honest toil. It is better that ten guilty persons should escape than that one innocent person should unjustly suffer. The court being the surest known means of exemplifying this doctrine, the lawyer who is honest to the court of which he is a necessary part, must step to his place and perform his allotted duty.

It will not do for him to say the personal appearances are against the prisoner at the bar, or that public sentiment has already convicted him, and the excited throng clamor for his life. Now, if ever, the accused needs a friend to stand by his side and see that the pledge of a fair trial guarantied to him by the constitution is scrupulously kept.

Let us imagine this to be the day of the trial. The prisoner is brought into court charged with murder. He pleads not guilty. His looks are against him; the impression has gone out through the community and fastened itself on the minds of men that he is guilty. The public press has photographed his red-handed crime on the minds of the men assembled there to qualify on the jury. Imagination quickened by

the strong prejudice thus created, detects in the features and manner of the accused unmistakable evidence of a murderer. In the light of what we have said, what is the attitude of an honest lawyer toward that man? Presuming, in common with all the rest of the community, that the prisoner is guilty of the crime for which he stands charged, is the lawyer right or wrong, in the highest moral sense and in the strict line of professional duty, dignity and propriety, in stepping to the side of that man and saying: "Sir, I will defend you." I say he is right in so doing. I say, further, that if the attorney in so doing does it with any hesitation as to his duty, or with any question as to its propriety in the light of professional integrity, he has never had a clear conception as to what constitutes true morality or the true nature of his calling.

What is the legal friend of the prisoner in his professional capacity required to do while standing thus between the jury and the accused? The prisoner being entitled under the constitution and laws, and by every principle of justice, to a fair, impartial trial, is entitled to be tried by a fair and impartial jury. This can only be done by the skill and experience of counsel. The prisoner is entitled to know from every man who goes into the jury box what prejudices may be existing in his mind against the man whose life is at stake, whether the opinions he has formed from all outside sources and the impression made by any means on his mind will require legal proof to overcome. If they do, then an injustice would be done at the outset, for the law justly presumes every man innocent till he is proven guilty, and this juryman already has his opinion that the prisoner is guilty, and having that opinion, he may be said to have made up his mind. He has therefore, in his own mind, found the man guilty, while the law presumes him innocent, so that without the aid of counsel the prisoner has not an even and fair chance at the outset.

In the laborious task of selecting a fair and impartial jury, all must admit that the attorney is acting entirely within the line of professional honor and good morals. In order that the greatest good may be done to the greatest number and that the innocent may not be made to suffer, all civilized countries

in their legal tribunals have adopted certain rules known as rules of evidence, well understood in their full scope and force by the bench and bar; their objects being to require the case to stand on certain and reliable proof, on facts, statements and circumstances well known and established, and coming from a direct and reliable source, to the end that they may establish the truth and not a lie. In doing this, the skill of counsel is indispensable to ascertain the motives of witnesses, their relations to the parties, their sources of information and credibility. While enforcing these rules, certainly the lawyer has no occasion to blush.

In furtherance of the ends of justice and in its administration, numerous statutes have been enacted, and our courts of last resort have rendered important legal decisions as numerous and diversified as the leaves of the forest. These statutes and adjucated cases are practically the law of the land, while they stand unrepealed and unreversed.

While standing at the bar of the court, invoking for the prisoner the protection which these laws applicable to his case give him and in the presentation of the facts and circumstances given in evidence, the attorney is doing a plain duty, right in itself and in furtherance of justice.

The attorney has now done his whole duty. What is the difference in point of ethics or professional honor whether the man was guilty or innocent? None.

Suppose he is clearly proven guilty, and the full and just penalty of the law is meted out to him at the end of a rope, is it not a satisfaction to know that the fact of his guilt was clearly established beyond all question of doubt by positive, direct, legal and unimpeachable evidence? That he has had a fair and impartial trial, has brought into requisition all of the machinery of the court, has been ably defended, and at last convicted, sentenced and executed, not on suspicion, prejudice and passion, but by holding the mirror of fact, incident and circumstance up to the sunlight of truth, revealing to the black hearted and red handed murderer his true self. Does this revolting picture of the man of blood throw any dark shadow across the face of the man who, in his professional capacity,

has bravely and fearlessly defended the doomed wretch? No.

Suppose, on the other hand, by the cool, critical and searching processes known to the law, it is demonstrated to a moral certainty that the man is entirely innocent of the foul crime of which the entire community and the public press have pronounced him guilty, what then? The shackles are torn from the trembling limbs of a man pronounced guiltless and clean, with his good name and honor vindicated. The loving wife, helpless children, the aged mother, the friends of his youth and manhood, with tears of gratitude gather about him and lift their hearts in grateful thanksgiving to God that one man had the courage to stand by the side of their brother, protector and friend when the winds howled and the night was dark. The advocate whose skill and eloquence have torn away the driftwood of falsehood and opened up the floodgates of truth, is lauded to the skies. He is the hero, the chieftain of a vanquished foe. The reward of victory, and that in a just cause, is grandly his, and yet he has only stood in his place and done his part, performed his duty, and in so doing, his feet, 'tis true, press roses instead of thorns. What matter, as a question of abstract right and professional honor, whether bare or shod his feet the path of duty trod? In both cases his efforts and accomplishments have been honestly directed in channels leading to the common fountain of truth and justice, and each are equally commendable, though unequally rewarded.

We do not claim that an attorney is always bound to take every case in which his services are desired. Circumstances may justify his declining.

Cicero said that where life was at stake, it was more honorable to defend than to prosecute.

The popular fallacy which imputes want of moral tone to lawyers who are willing to defend those apparently guilty of crime, has been exposed by Dr. Johnson and Rev. Sydney Smith (see Boswell's Life of Johnson, Vol. 3, Ch. 2; Ch. 9, Vol. 4; Ch. 1, Edinburg Review, 1826). Erskine denies the right of counsel to withhold their services.

The practical working of the machinery of the courts is not without serious defects, and its results are often unsatisfactory.

We are bound to admit that in many instances unscrupulous men, holding licenses to practice law, by virtue of their advantageous position, impose upon the public, and use the courts and juries as a means for perpetrating fraud, rather than promoting justice. This is the result of human depravity, rather than serious defects in the organization of legal tribunals. Impostors are found in all other professions and walks of life, quite as frequently as in practitioners at the bar. These being only exceptional cases, tend to prove integrity and fair dealing as the rule.

We make here a sharp distinction between the attorney who craftily creates disturbances, manufactures testimony, cheats his clients, takes advantage of his "little learning" to ensnare the ignorant and unsuspecting, indulging in practices unwarranted and denounced by courts, and the man who, in all his professional duties, strictly adheres to the rules, requirements and regularities of the profession. This we deem to be the distinction between an honest and dishonest lawyer; one is a pestiferous, pettifogging pirate; the other, an indispensable adjunct of the court, a promoter of truth and a friend to mankind. The world is better because he has been in it, and on her imperishable tablet he may leave his own initials carved in letters of living beauty.

Pursuing the unmistakable pathway of high professional honor, now through quagmires of doubt and defeat, then upward to summits of cloudless truth and splendid victory, his attitude, whether on the wrong side or on the right, in victory or defeat, is that of the patient, fearless, sleepless sentinel at the golden gateway of truth.

Edgar L. Jayne.

THE REFRACTION OF EVIDENCE. *

"As long as a ray of light moves through the same medium, it moves in straight lines; but in passing from one medium to another, one part of the light is *reflected*, or thrown back, and another part enters the medium, but in a different direction from that which it previously pursued; this bending of the ray is termed *refraction*." So writes a well-known author on physics. He is dealing with the subject of light, when he uses these words, very far away from anything so abstract as evidence. Yet any one who is acquainted with "the secret history" of the administration of justice by our complex and highly artificial machine, will, from the definition quoted, see the full force of the phrase which heads this paper. To be behind the scenes from time to time—to listen, that is to say, in open court; but to do more—also to have seen the precognitions, so to speak, and to have been even behind the precognitions—to have seen the stream of evidence both as it leaves its fountain source and as it reaches its final output,—these things involve the deepened conviction that a judge's "facts" are far more often mere faint resemblances than realities. It is not suggested that in the long run substantial justice is not generally done. Perhaps, in the majority of cases, it is. But in an action of any considerable amount of complexity such a result would seem to flow rather from chance or some blind instinct than from a reasoning from facts seen in a full clear light.

And one acquainted with the facts in their pristine purity, who listens to discussion and decision in the case, must come

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away in a state little short of despair, and in a state nothing short of amazement.

If, for a moment, we may conceive a group of facts as personified, then our point cannot be more graphically illustrated than by recalling an incident which was depicted in *Punch*, now a long time ago. A comely dandy, in whose face, figure, and dress no fault could be descried, was in one picture seen sauntering grandly along the terrace in front of a certain lady's house, and he was brimful of satisfaction at the thought of how perfectly captivating he must appear to the lady aforesaid.

So would our facts feel. Exactly similar must their feelings be in regard to the lady Justice. They know their irresistible power, and might smile at the consciousness. But there was a companion picture to that just mentioned. There was a blurred, smudged, distorted, twisted, all but unrecognisable reproduction of the graceful youth; and this represented truthfully the elegant creature as he was actually seen by the lady aforesaid through a faulty pane of glass, which some malicious glazier had fixed in that window of all others! Could he but have known it! Could he but have seen himself as this other saw him, his snug complacency would have vanished far over the sea which Leech had given him for a background; and he would have refused any longer to submit the superb outlines, and the effective lights and shades of his person to the false ordeal of that defective glass. So, too, could our facts but—!

To the most casual observer it must have many a time appeared unfortunate that evidence has to pass through so many different media in a law court in the course of its transmission to the eye of the judex, whoever that may be. It is the nature of our judicial machine, with its many apparently indispensable component parts, that this should be so. But it is obvious to any person who gives slight attention to the subject, that, in passing from each one of these media to another, there is more than mere risk of the evidence "entering the new medium in a different direction from that which it previously pursued." It is beyond doubt that there must be risk. * * *

Hearsay gets a cold shoulder in a law court; and only if the best—that is, first hand—evidence of the facts is not available,

will secondary evidence thereof be admitted. Unless John Noakes is dead, or mad, or out of forensic reach in some way, those lawyer people will not listen to Tom Style's story of what his mate John Noakes told him about the assault which Bill Hodge committed on him. This, of course with a few technical exceptions, such as matters of credibility, part of the *res gestæ*, etc. But in the individuality of one single person who is suddenly transformed from a man into a witness, there is to be found a plurality of media of the kind in question.

His power of observation, his power of recollection,—neither of them, in all likelihood, ever exercised with precision up till now,—his power of language, possibly never exact or punctilious, and his presence of mind, will all be put to a severe test in the prolonged precognoscing and cross-precognoscing, in the lapse of time, and in the complicated and accumulated badgering of a "case"; and will offer, in one way, quite a number of refracting media to the beams of fact, which were to pass through him to the court. For he has to tell the same story to so many different people,—and not to tell it in his own way, but to allow it to be elicited from him in their own way, according in each case to preconceived notions, and natural bents of mind,—that in spite of himself he sees it gradually lose the shape which he meant to give it, and with silent despair he beholds it enter the ultimate medium bent to a terrible angle on the direction in which it entered him. And that latter direction, too, be it steadily borne in mind, was itself the resultant of refraction. In this way alone, and that with perfect *bona fides* and good intention on the part of all concerned in the process, evidence receives many a sorry twist.

The different media vary greatly in their refracting qualities, but they all help.

Not to dwell on the intelligence of the witness, this imperfection of his power of expressing himself has very often a vast deal to account for in this way. Finding himself in an unwonted position, the witness, if uneducated, not unfrequently seeks to rise to the occasion, and uses unwonted words, the meaning of which he does not know with exactness. And even the best of non-expert witnesses suffer counsel to put

words into their mouths, especially if they themselves be not over ready, but halt at words. Counsel, too, in good faith—let us concede it, for concession of this kind is cheap—occasionally are over shrewd in their effort to understand a stupid or reluctant witness, and, like vaulting ambition, over-shrewdness of this kind sometimes "o'erleaps itself, and falls on t'other side."

Then deafness in a presiding judge is a sore impediment to the straight passage of your evidence. Witness the experience of Mr. Winkle in the well known case of Bardell v. Pickwick. "What is your Christian name, sir?" angrily inquired the little judge. 'Nathaniel, sir.' 'Daniel,—any other name?' 'Nathaniel, sir—my lord, I mean.' 'Nathaniel Daniel, or Daniel Nathaniel?' 'No, my lord, only Nathaniel—not Daniel at all.' 'What did you tell me it was Daniel for, then, sir?' inquired the judge. 'I didn't my lord,' replied Mr. Winkle. 'You did, sir, replied the judge, with a severe frown. 'How could I have got Daniel on my notes, unless you told me so, sir?'"

This unfortunate element is now to be met with mainly in criminal cases. In such a court there is no getting behind the judge's ears, and his own notes, which form the only official record of the evidence; and which, of course, contain an odd abridgment of the evidence as his deafness brings it to him.

Naturally, we confess, that we do not always observe, to a minute or two, what time of day it is, or what is the kind and color of the antimacassar which from time to time hangs on the back of each chair in our room. But a long course of frequenting these courts, and seeing the ignominy and contempt with which a witness is treated, who does not develop into a prodigy for the occasion, by remembering these things like a time-table or catalogue, has rendered us watchful and constantly ill at ease. In order to be ready for the great time when it arrives—it may come on us at any moment—we are ever on the alert. If a cock crow, we note the time, and enter it in our diary. If a bell ring, we jot down the hour, minute, second, and, on the first opportunity, compare our watch with Greenwich mean time, so that there may be no mistake. Let a solitary man pass us on a lonely country road, we have a

"detective" camera under our vest, with a lens sticking out at a button-hole; we touch a spring, and have secured five photographs of the creature before he has whistled one bar of his tune. We next jot down the particulars of his height (measuring it from his shadow as compared with our own), take a tracing of his footprint, draw a plan of the surrounding country, with the particulars of the cropping of the neighboring fields, take a few meteorological observations, and make an estimate of the pace at which the tramp was going when he passed us. By a diligent attention to these details, and continual practice of such rules, and by elaborate conning over weekly of all the facts we have ever observed ourselves or heard from others, we hope at most to pass muster if our time should ever come. But only to pass muster and no more. * * *

When the rustic innkeeper in some primitive village has a dispute with an aerated water manufacturer whose ginger beer has not conformed to sample, a dispute involving a sum large enough to admit of the matter being settled in the Court of Session, he cannot but be impressed with the vast number of people required to settle so apparently simple a matter. And if this simple man takes a close interest in and supervision of the conduct of the affair throughout its stages (and what simple man does not?) he must feel as much "passed on to the next" as if he were, shopping in a large establishment, flippantly rebuffed by one pert miss after another until he reach the proper counter in the proper department at which to effect his purchase. Let us go with him on his journey. We may thus take note of the refracting media through which the narrative has to pass.

He first exhausts his own means of bringing about a settlement. A few letters are interchanged. They begin with comparative mildness, and the allegations are diffuse. The last letters are far more vigorous and even vituperative; and the allegations are more definite, as the grievance takes shape in this host's mind. Frequent brooding over his supposed injury helps to emphasize parts. Occasional communings with his various friends have the same tendency. And it comes that those which he regards as salient points get polished up, are

freed from awkward accessories, and, in far the greater part unconsciously, he gives his side of the case a complexion not precisely its own. But heat and obstinacy on the one side, or on both, prevent an amicable settlement of the dispute by the parties themselves. The ultimatum has been rejected. Reluctantly, and—in nine cases out of every ten it is so—with a good deal of suppressed mi-giving, our innkeeper starts on the next market day in the neighboring town, not merely to buy in his weekly stock of provisions and dispose of his wool, but with the stern resolve to consult a lawyer.

Arrived in the office of the solicitor most trusted by those of his circle, he states his grievance and complaint. Not, perhaps in the most exact of language, and under the influence, certainly, of a good deal of indignation and excitement generally, this medium transmits the evidence according to him; and it leaves him so refracted and passes into lawyer number one. That gentleman looked at in the light of a medium, would appear to be smooth of surface and transparent in substance. One would say at first sight that his refracting quality was not great. He leans back in his chair, strokes his shaven chin, and looks the very picture of open and passive receptivity. He listens merely—at first. But though learned in the law, he is still a man. He has his preconceived notions of men in general; of men like his present client in particular, perhaps even of his present client individually. Experience of men may have rendered him skeptical and incredulous. Or he may, at the outset, lend an over partisan ear, in spite of himself, to any one whose cause he is called on to espouse.

All these are just so many tendencies to refraction; each one slight in itself, no doubt. Then his legal training predisposes his mind to look at facts in certain lights, and to shut his eyes to certain aspects of them. At first, then, the solicitor listens passively. He presents his mind, thus constituted to receive the innkeeper's narrative of events. But to that mind the narrative is not complete. There are many points omitted or obscure which strike the man of business as of moment. And thus he puts questions to clear up and supplement. Now, in the first place, no form of narration can open the door so widely

for misunderstanding to come in as that of question and answer. There is the double opportunity for error to get an entrance. But, passing from that, this interrogation, even when innocently pursued by agent towards client, may place the client in temptation if he is not a man of moral strength. Finding his case incomplete, he volunteers replies on the spur of the moment to which he feels constrained to stick with tenacity throughout the sequel. Even in the country agent there is to be found a modicum of that intellectual exaction, that exaggerated demand on the average citizen's faculties of observation and memory to which we alluded as characteristic of the forensic branch of the profession. Questions are thrust by him at his client, to answer which with complete accuracy and veracity would imply mental powers and training unheard of in our village.

The innkeeper, in all likelihood, is unwilling to appear so stupid and unobservant; or, possibly, if destitute of any such pride, he fears that his case may be in danger if he should be unable to furnish information on points which the lawyer's questions seem to indicate as of vital importance. Not having taken the elaborate precautions *ab ante*, of which we gave an illustration, he is now compelled to make up for the omission retrospectively. He may be too honest or too stupid to do this on the spot. His faculties may not at the moment be sufficiently collected to permit it. But, in that event, the questions linger in his mind, as well as the unpleasant impression of the position of his case which they conveyed. He goes home to ponder over the facts. As he trots home in his gig, as he smokes his pipe in his porch, after he awakes, before he sleeps, and when the prosy parson is preaching, he turns it over and over.

Now the memory is like many tradesmen. On occasion it ceases to be a mere retailer, and under stress, becomes a manufacturer itself. Often, where it cannot from its stock in hand supply an order made on it, this ready-witted faculty extemporizes from raw material to meet the demand. Ay, and in doing so it actually imposes on the employer of it, handing him for Pears' soap a hastily boiled article with Pears' label.

The innkeeper is surprised to find that he remembers. They are only, he thinks, "Scenes that fancy can repair from dark oblivion."

There is a game which, as is well known, illustrates this regrettable characteristic of the human transmission of evidence, at least when that is orally transmitted. The name of Russian Scandal has been assigned to this instructive amusement, and without admitting any appropriateness in the national adjective which describes the scandal, we may state that the game consists in writing down a short statement of any kind as it is told to the first one of, say, twenty persons in a room; and of comparing that with the incident as told by the last person of the twenty, after its having been transmitted from one to another throughout the whole score. To one who tries it for the first time, the result is startling, and is rather likely to shake his faith in the value of human testimony. Now, of course, the analogy is not in all details exact. But it is very close for all that. For one thing, there is not in a proof in court of law the same number of media transmitting oral evidence at least, as there are make-believe Russians engaged in the amusement mentioned. On the contrary, the sole medium in the normal case is the witness whose knowledge is at first hand, who has actually seen the incident occur, or heard it, or smelt it, or felt it, or tasted it, with his own senses.

Again, it is really questionable whether a joint minute by prosecution and defence agreed on one version could get over a judge's notes to the contrary effect. But in a civil proof now there is in the Supreme Court a short-hand reporter. One thing, however, in a judge which the phonetic art is powerless to overcome is a judge's unwillingness to hear. A great writer on the pathology of mind has commented on the enormous amount of phenomena around us to which we are habitually asleep, and must be habitually asleep if we are to attend to our affairs at all. It would be impossible to concentrate attention without gradually acquiring this habit of unconsciously shutting ones eyes to the innumerable objects and incidents which environ us. Now, your lawyer—and more particularly and pre-eminently your judge, for it is his function—carries this

universal habit deliberately and intentionally very far into the discharge of his duties. He hates the irrelevant as he hates sin. He is displeased with a witness, and indignant with a pleader who so far forgets himself as to insinuate a thin wedge of irrelevance.

But there is sometimes a tendency to carry this to extremity; and judges have been known to exist who so preconceived the form of a case, and so systematically shut their ears to any evidence irrelevant to that form, that some refraction was inevitable—the evidence must be bent on entering their minds. Surrounding facts, which would have affected the general tone of the testimony, were excluded; and as a result a wrong impression given.

Then, again, your examining counsel has sometimes an ingenious way of causing refraction by inducing a little ambiguity. A worthy old lady was once asked, "And, pray, Mrs. Maloney on which side of the street do you live?" Now had Mrs. Maloney not chanced to be a very wary woman, she might have answered, "On the right hand side" or, "On the left hand side, sir," as the case might be. Had she done so, does the possible sequel not call up to the reader's mind many an actual case? At a later stage, the learned counsel would refer to the worthy lady's evidence as showing beyond all doubt that she could not possibly have been an eye-witness of the events to which she pretended to speak (and that, as you, gentlemen of the jury, remember, with such audacious confidence), seeing that she lived on the left side of the street, from which side the occurrence spoken of could not by any possibility have been visible. The opposing counsel interrupts.

The witness gave evidence to directly the opposite effect. She said she lived on the left hand side of the street, but his lordship would see that she undoubtedly meant the side on the left hand of a person looking *up* the street. The learned friend of the interrupter remarks with a sweet, meek smile of injured integrity and forgiving martyrdom, that of course he is in his lordship's hands; but he would humbly put it to his lordship, whether it is not only consistent, not merely with common sense and scientific usage alike, but also with the daily

practice of all sane persons, always to suppose that one is looking *down* a street when one is speaking of right and left.

Then his lordship interposes. The counsel may take it for granted that the witness meant to speak as if she had her face turned *up* the street (so it struck this refracting medium).

The counsel dies hard; counsel being paid to die as hard as decency and the thread of the drama will allow. He acknowledges that his lordship is right; but he is in his lordship's hands if *up* the street does not mean exactly what his friend means by *down* the street. "Not at all," says the friend. The judge (so it struck this refracting medium) is very clear that this is so. Down the street means, as is at once obvious, towards the main street into which it leads—on the flat plan: in reality, Mrs. Maloney's street leads to this same main street by a steep gradient of one in four, and the ignorant inhabitants who know nothing of plans, but whose lungs and limbs give them some notion of what is *up*, are wrong.

Now this may be exaggerated. It is intended to be drawn pretty broad. Yet after all does it not forcibly remind one of instances which have taken place in one's own experience as a listener? All this might very readily have happened had Mrs. Maloney not been a wary woman. But that worthy dame was above all things cautious. And so her reply was not the ambiguous one we have for the moment supposed. It was quiet and dignified, but wary. "And, pray, Mrs. Maloney, on which side of the street do you live?" "On both, sir. On the right side as you go along to X street, and on the left as you come back!" But, alas! all witnesses are not so cautious as Mrs. Maloney.

Again, do not counsel, and does not the judge expect too much from human nature? We have never been a witness, but have often quaked and shuddered when listening to an examination at the thought of what a sorry spectacle we should present, how hopelessly, criminally far short we should come of the high standard demanded by these awful persons. Let us again put an imaginary illustration, not exaggerated as we humbly think. "Mr. Muggins, when you came into your house did you go straight to your drawing-room?" "Yes." "Now,

what time was this?" "I really could not say exactly—it was between eleven and twelve." "Oh, but we must have it more exactly than that, you know. How long after eleven was it?" "I positively cannot say. I had no reason to attend particularly to the hour." "Dear me, Mr. Muggins, is there not a time-piece in your room?" "Yes." "And when you sat down was it where you could see it?" "Can't say." "But you must say, sir. Where is the time-piece usually placed?" "On the mantel-piece." "Well, you could surely see it there. What time was it by the time-piece?" "I can't say. I did not look to see." "Look to see! Dear me, sir, was it not staring you in the face?" "I can't say." Severely—"Anyhow, you did not know what time you came home?" "No." "Did you sit down?" "Yes." "What kind of antimacassar was there on the chair?" "I do not remember." "Do not remember! Dear me, was it dark? Could you not see?" "The gas was lit; I could see well enough." "Then do you mean to tell us that you did not even notice the color of the antimacassar on the chair you were sitting on?" "No, I did not." "Or its texture—whether it was of wool, or of satin or of plush, or of lace—none of these?" "No, sir, I did not." Counsel adds dryly and most significantly, with a very meaning look at the judge, "Very well!"

Now the judge, in the general case, would conclude that this witness's evidence was to have only a moderate amount of weight assigned to it, inasmuch as it was the evidence of an unobservant man, who did not even know the color or material of an antimacassar against which he was sitting; and of an inexact man, because he did not know at what hour he came home; and of a forgetful man, because he must have noticed the time in the time-piece, although he could not tell it when questioned in court. And if this man's evidence was adduced to prove a negative, let us say that he did not hear a shot fired in the next house, about twenty minutes to midnight, his evidence is refracted in entering the judge's mind to this extent, that his lordship does unconsciously reason, that the fact of this man not having heard the report of a shot, really means nothing seeing that he is such a dull, unobservant creature, as not

to have noted the little facts above mentioned. Now Muggins is really a very observant man. Leaving out of view the possibility of his having sat down with his back to the time-piece, and not in a chair with an antimacassar at all, these, in any case, are points one would not remember, things done mechanically, whereas the report of a gun about midnight is, in most neighborhoods outside of Ireland, rather unusual, and will arrest the keen attention of the most sluggish. It is this invariable habit of expecting and requiring so much more than human nature in every man, woman and child, whom blind chance (and not, mark you, a competitive examination) has elevated into the rank of a witness, that causes ordinary humdrum mortals to live in constant dread of ever being elevated into that position.

A Scotchman on one occasion consulted a solicitor in regard to a claim made against him. He told him his plain story, and then rose at once and left, saying, "Noo, these are the fac's as they happened; ye maun pit in the leein' for yersel'."

This was expressing very bluntly and, to some extent, misleadingly, the popular notion of the next stages in our innkeeper's suit. The country agent has now to throw the facts as stated to him into a form for transmission to the Edinburgh agent. Lawyer number one and his clerks now hand the story on to lawyer number two and his clerks. Some refraction is almost inevitable in the process.

The medium which the story next reaches is the Edinburgh practitioner. It is his business to condense it and to put it in a stiffer and more abstract form. Many a picturesque detail goes by the board, and he and his clerk pass it on to the junior counsel and his clerk. Here is more refraction.

Lawyer number three has next—in the ripeness of time—to transmit the rays of light to lawyer number four. Senior counsel has to be instructed.

These, then, are the refractions in the preliminary proceedings, before the actual trial is reached.

The evidence reaches the Inner House in the cold, bald form of a print of the short-hand writer's report of the proof, "stript of its accompanying grimaces."

Although judges in the higher court are men not at all likely to allow feelings so produced to affect the weight of a witness' testimony, it is something to be spared the exertion. Thus they have the words, and nothing but the words, from which to extract a meaning. But before the evidence has reached the printed form it has been subjected to a process not so devoid of risk of refraction. The reporter has had to extend the short-hand report which he has taken of the evidence. It would, of course, be a tedious way of reporting, to extend the testimony verbatim in the form of question and answer, just as it was led. Some process of extracting the essence of it is necessary. It is only when a leading question is put, or when one counsel wishes to have a hit at another, that the reporter is instructed to record the question as well as the answer. This extracting is admirably done. Still, since we are now engaged in enumerating possibilities, this operation also must go down as one in which misunderstanding and unintentional misrepresentation can occasionally arise even with the most wary.

Thus, apart from clerical errors and many an odd opening for documentary slips and omissions by the way, there are, at least, all the media we have referred to, with all their very possible possibilities of refraction. It is, indeed, curious to notice in a complicated case how the very multiplication of means for sifting the evidence, the very elaboration of the purifying machine as it were, is sometimes the very cause of the confusion or distortion. In one or the other of the increased precautions, the facts are misunderstood or get a twist otherwise, which in a simpler machine would have been avoided.

REFORM IN CIVIL PROCEDURE.

The able and timely article by Mr. Robert Hervey, in the last number of the Law Times, on the subject of "Law Reform in pleading and practice in Civil Cases," in the State of Illinois, is deserving of the earnest attention of the legal profession.

The objections to the present system of common law pleading which he points out, are certainly very serious ones; and it is not creditable to a progressive and enlightened community like this, that it should be one of the very few States to retain in all its absurdity of legal fiction and bewildering tautology, the antiquated and semi-barbarous system of pleading, which was inherited from England, and which was abandoned even in that conservative country, about forty years ago. Mr. Hervey's article however, dealt only with the objections to the common law system, while it is an admitted fact that the system of chancery pleading and practice in this State, is equally antiquated and objectionable, and that reform is as urgently required in the one as in the other.

I do not share Mr. Hervey's objections to the adoption of a Code, for, with all due respect for his years and experience, I venture to express the opinion that a "Code of Civil Procedure" uniting the two present systems, and establishing one uniform system of pleading and practice, is the best, and in fact the only practical solution of the present difficulty. The English "Common Law Procedure Act," which Mr. Hervey wishes substituted here for the present common law practice, was certainly an immense improvement on the old system, as was

also what was known in England as the "Reformed Chancery Practice," a grand improvement on the old, absurd and clumsy system, which still obtains here; but they were both discarded in England, fifteen years ago, in favor of a Code modeled after that adopted in New York State in 1847.

From eight years practice in Canada under the "Common Law Procedure Act," and "Reformed Chancery practice," and four years subsequent practice under the new English Code, which was adopted in the Province of Ontario, in 1883, I unhesitatingly say that the latter has all the advantages without any of the defects of the former dual system. By the provisions of the Code the old distinctions between actions at law and suits in equity, and all the forms of such actions and suits were abolished, and but one form of civil action for the enforcement or protection of private rights or the redress of private wrongs, is recognized.

While however, the system of pleading has been made uniform, and the practice has been thereby very much simplified, the general rules of law and principles of equity remain unchanged, and are applied and enforced as heretofore. In the language of Selden, Justice, in Goulet v. Asseler, 22 N. Y. 228, "Although the Code has abolished all distinctions between the mere forms of action, and every action is now in form a special action on the case, yet actions vary in their nature and there are intrinsic differences between them, which no law can abolish. . . . The mere formal differences between such actions are abolished. The substantial differences remain as before. The same proof therefore is required in each of these kinds of actions as before the Code, and the same rule of damages applies." In order however, to avoid uncertainty or doubt as to the principle applicable in any given case, it is usually provided that where there is any conflict between the rules of law and equity, the latter shall prevail.

Under the dual system, a party is liable to institute a suit in equity when his remedy is at law, or *vice versa*, with the result of having his suit dismissed and costs to pay, if no more serious loss is sustained. Again, under the present system, a suit in equity has frequently to be brought either in aid of, or

to restrain an action at law, and a cross bill has sometimes to be filed by a defendant in chancery, to obtain some necessary substantial relief; while under a Code, all the rights and remedies of the parties may be determined in the one action, and a great saving of time, labor and expense effected.

Almost all the other States of the Union have adopted the New York Code in a more or less modified form, and this State should no longer remain behind the age. It would not be necessary here, as it was in New York, to abolish or change existing courts, since the same courts here administer law and equity.

But whether a Code be adopted or not, it is, I think, universally admitted that there is a crying need for a reform of some kind, and for the adoption of a system in keeping with the times, and in which there will be more regularity, certainty and clearness. I venture to point out a few changes in and additions to the rules of practice, which have suggested themselves from my experience under what may be called the "intermediary" and "modern" systems, and which I think should be made in any event:

1. Every first paper filed in a suit by either attorney should contain the address of the attorney filing it. The necessity for this must be frequently felt in this City, in the case of attorneys beginning to practice or changing their offices after the publication of the annual legal directory. In such cases it may often be very difficult, if not impossible, to serve a notice of motion or other paper requiring service on the attorney.

2. Every summons or first process should be served by copy. The wisdom of the present chancery practice here in this respect must be so apparent, that it is surprising, the rule has not been made equally applicable to common law. It would, I know, be much more agreeable to the sheriff's officers to so serve such papers, and it would be much more likely to prevent an ignorant man or one not familiar with the English language, from allowing judgment to be obtained against him by default, when he had a good defense.

3. Either the summons should be specially endorsed with a short statement of the plaintiff's claim, or the plaintiff's de-

claration should be filed at the time of the commencement of the action, and a copy served on each defendant with the summons so as to inform him at once of the nature and amount of the claim against him.

4. Appearances should be required to be entered within a certain number of days, say ten or twelve, after service, and in default of appearance in all actions upon contracts for the payment of money, the clerk of the court should have power to enter final judgment, on the plaintiff or his agent filing an affidavit verifying his claim. This would relieve the judges of the work of calling up and disposing of the usual list of default cases of this kind, and would in many cases, especially in outer counties, expedite the obtaining of judgments by default.

5. The parties should be required to file their subsequent pleadings within a certain number of days, and a copy of each pleading should be served on the opposite attorney. The action should then be triable at the next term occurring ten days after issue joined. This would obviate the necessity of examining the files or removing them from the court, and would give the parties time to prepare for trial in ordinary cases without having to apply for a continuance, as has sometimes to be done now when the pleadings are not closed until after the commencement of the term.

6. Each party should have the right, after issue joined, to take out an order to compel the opposite party to attend before a master or special examiner, for examination on oath touching his knowledge of the matters in question in the action, on his being given reasonable notice and being paid witness fees. This has proved a very useful provision where it is in force, and it would, I think, be resorted to in every important case, so that each party might know, before incurring the expense of a trial, the nature of the evidence likely to be adduced against him, and perhaps bring about frequently a settlement or abandonment of the suit, and thus relieve the judges of a great deal of work.

7. A judgment creditor should have the right to take out a like order to compel the judgment debtor, on being notified and paid, to attend before a master or special examiner, for

examination on oath as to what property he then had, which was liable to execution, or as to what disposition, if any, he had made of it since the debt was contracted. This has been found by experience to be the simplest, cheapest and most expeditious method of discovering fraudulent dispositions and concealment of property, and it affords a means of getting at debtors' property which could never be reached by a creditors' bill, or a bill to set aside a fraudulent conveyance. In some cases, of course, such an action would still have to be instituted, if the evidence of fraud obtained from the debtor on his examination, rendered it advisable. Provision might be made for the punishment, as for contempt, of any debtor refusing to discover or account for his property. on such examination.

8. Provision should be made for the renewal of executions before the return day, by an endorsement thereon by the clerk of the court who issued it, where the money cannot be made within the ninety days during which the execution is in force, so that the first execution creditor, who has acquired priority by superior diligence, or by his claim being prior in point of time, would be enabled to retain it. It frequently happens that property belonging to the debtor cannot be discovered or seized within the ninety days, and the efforts of the first execution creditor in that direction, instead of benefiting himself frequently enable a second or third creditor, whose execution has been issued later, to step in and take everything. It sometimes happens too, that the debtor has no property liable to execution, when the execution is first issued; but by keeping it renewed from time to time, the first execution creditor preserves his priority whenever any property liable to execution is acquired by the debtor.

9. A great injustice is done to successful suitors by the want of any provision for payment, by the unsuccessful party, of the fees which the former is obliged to pay his attorney and counsel in the conduct of the case. In England and Canada there is a regular itemized tariff of attorney's fees; and a bill of costs is there an invariable accompaniment to every judgment. In New York too, and in some of the other States, provision is made for the payment of such costs, or a part thereof. While

I do not advocate the adoption or an itemized tariff, I think power ought to be given to the judge who tries a case to partly recoup the successful litigant for his expenditure in that way, by awarding a sum for counsel fees. This might be limited according to the amount involved, say not to exceed $25.00 per day in every case under $500, and not to exceed $50.00 per day for first counsel and $25.00 per day for second counsel, when employed, in cases over that amount. Provision might also be made for allowance of fees of $5.00 to $25.00 on contested motions, to be fixed by the judge at the time. I am aware that there is a strong feeling among the profession here against such a provision, as it is claimed it would make a lawsuit so costly that it would amount to a practical denial of justice to the poor man. I cannot understand how it would deter any man, rich or poor, who had an honest claim against another from litigating it; but on the contrary, it seems to me that he would be encouraged to institute a suit by the knowledge that when he got a judgment for what was due him, he would not have to lose half of it in paying his lawyer's fees. It further appears to me that it would have the effect of deterring wealthy individuals or corporations from vexatiously contesting valid claims and appealing against judgments in the hope that their impecunious opponents would not be able to pursue them to the court of last resort, or that the amount involved would not warrant such an expenditure.

10. It would be a great advantage in a city like Chicago, to have two practice judges, one for each court, to sit daily for the hearing of all motions arising in cases in such court. Two of the present judges might be selected for that purpose, and the right of appeal from their decisions might be exercised as at present. Two important advantages would accrue from this change: first, it would be a great saving of time and expense to suitors in attendance at court with their witnesses and counsel, and whose cases were being or about to be tried, to have the constant interruptions of trial judges to hear motions in other cases, dispensed with: and secondly, it would secure a more uniform series of decisions on points of practice, and would perhaps allow of some system of practice reports to be

published for the use of the profession here, which I am sure would fill a want that is greatly felt at present by every practicing lawyer.

There are several other points which suggest themselves, but want of space prevents their enumeration. In order to bring about a reform in practice, it is necessary that the legal profession should take an active interest in the matter, and that the sympathy of the judges should be enlisted in the movement.

In some of the other States, commissioners have been appointed by the legislature to prepare a suitable Code, and their drafts have been adopted with or without modification, as seemed fit; but such a course here would, in the first place, cause several years delay, owing to the sessions of our legislature being only biennial; and in the second place, it is by no means certain that the legislature, at least as it is at present constituted would take the initiative in the matter. As Mr. Hervey did not offer any definite suggestion as to how this reform should be brought about, I would venture to suggest that the Bar Association of Chicago should take the matter up, and devise some means of obtaining an expression of opinion from the bench and bar of the State on the subject

A committee might be appointed in this City, including some members of the bar who have come here from other States, where a Code has been in operation, to draft a Code suitable for this State. If some provision could then be made for the expenditure, copies might be printed and distributed among the judges and the leading members of the bar throughout the State, for suggestions as to changes or modifications, which their experience might advise. The committee might then be further charged with the duty of seeing that the final and mature embodiment of the wishes of the bench and bar of the State in this matter, should become law.

The only serious argument that can be offered against this change in the procedure, is that it will render a great part of the laboriously acquired knowledge of the present systems useless, and that it will also, for the present, introduce an element of uncertainty into the practice, owing to the want of precedents to follow. This argument however, is, and would be

equally applicable to every change heretofore made, or hereafter to be made, in any and every law, and if allowed to prevail, would prevent any improvement in the laws, no matter how wise the source whence it emanated. This, I take it, is so inconsistent with the genius of American institutions, that it will not be considered worthy of serious consideration; and future generations of judges, lawyers, and litigants will praise and bless the enlightened foresight of those who were instrumental in bringing about such a great and necessary reform.

M. J. Gorman.

INTER-STATE COMMERCE

AS AFFECTED BY THE LATE WABASH DECISION.

Prior to the present century the world's traffic remained almost stationary for a thousand years. The adoption of steam for transportation purposes marks the beginning of a new era in commerce. The first fifty years of railway history witnessed legislation mainly devoted to railway development and extension. This resulted in the concentration of capital and the creation of corporations. The people in their frantic efforts to foster railway building endowed these corporations with almost unlimited powers, charter privileges and corporate franchises. The corporations in turn, clothed with grants, privileges and constitutional guaranties, coupled with power of aggregated capital, became possessed, as they supposed and strenuously asserted, of unlimited power as to the rates charged for the transportation of freights and passengers. Though they were the creatures of legislative will and were indebted to the law-making power for their very existence, yet, they asserted under the plea of the inviolability of charter contracts an independence of legislative control truly startling.

This supposed sanctity of charter contracts and freedom from subsequent legislative regulation and control, was first authoritatively and distinctively announced in the now famous Dartmouth College case. The principles enunciated in that case were not without limitation by the decision itself, and subsequent events demonstrated that the Court, though wise in legal lore and constitutional learning, had but a faint conception of

the immense power and influence corporations were soon to exert in commercial affairs. It is sufficient to say in passing, as every student of constitutional jurisprudence well knows, that by a sort of judicial pruning, limitations and exceptions, the remains of the famous College case became quite inadequate to shield corporations from subsequent legislative regulation, except in the few rare instances where by the charter contract in words of "unmistakable import" the legislature had forever granted away its power of subsequent control and regulation.

It is believed that the long contest over this constitutional question in its varied phases reaching, as it does, from a period early in the judicial life of Chief Justice Marshall down to and including a large portion of that of Chief Justice Waite, would be, perhaps, without a parallel in interest, learning and profound research in all the annals of English and American constitutional history.

The vitality of corporations is axiomatic, and quietly submitting to a legal defeat is certainly not one of their characteristics. We, therefore, next find commercial traffic corporations defending themselves against unfriendly legislation from another constitutional stand-point, known as the inter-state commerce ground. This barrier to the supposed inroads of State legislation upon the so-called vested rights of railway and other traffic corporations to fix their charges at will, was distinctly interposed in what are now known as the Granger cases. —(Munn v. Illinois, 94 U. S. 113, Chicago &c. R. R. Co. v. Iowa, 94 U. S. 105.)

It was not, however, a new principle in the constitutional law of this country, but rather an application to a new class of subjects with different surroundings of an old and well known principle.

Prior to the adoption of the Constitution, colonial history is replete with acts, arising from rivalry, avarice, and perhaps other unjustifiable motives, which seriously crippled the then existing inter-colonial commerce. The same state of affairs existed during the period our government was under the Articles of Confederation. The framers of our Constitution, therefore,

wisely incorporated in that instrument the clause giving to Congress the power to regulate commerce with foreign nations and among the several States. The application of this provision of the Constitution to the advancing stages of our civilization, and adapting it to the new conditions of commerce and adjusting the rights growing out of the continually changing order of things, has been a work of great difficulty, aided as our courts have been by our greatest constitutional lawyers.

This difficulty has been augmented no little by the fact that our greatest exponents of constitutional law have always been divided into strict constructionists and liberal constructionists; those who have construed this clause of the Constitution to mean that the power of Congress over this subject of inter-state commerce is absolute and prohibitory as to the States, and those who, admitting congressional jurisdiction, yet, contended that the power of the State was concurrent with Congress. Hence it is that no reconcilement can be made of the conflicting decisions growing out of this vexed question.

Indeed it is impossible to reconcile the decisions of the same Court at different periods of its existence. Even the decisions of the Supreme Court of the United States are, as we shall see, not entirely harmonious. That great tribunal, popularly supposed to be at all times above local influence and to be invested with a sort of majestic supremacy upon constitutional questions, has at times manifested a wavering disposition, as if a reed shaken by the wind.

The current of its decisions has not been as the crow flies.

One source of difficulty has been in attempting to extend congressional regulation not only over that which is strictly commerce, but to all the instruments of commerce by means of which traffic is carried on; as harbors, pilotage, wharfage, bridges, steamboats, rivers, canals, railroads, telegraphs, &c.

There would seem to be more practical wisdom displayed in a uniform system of law regulating bills of exchange and promissory notes without the use of which, but few commercial transactions occur, than there is in the question in what particular part of a steamboat a particular passenger should or should not sit or sleep, and that in the absence of congressional action.

A large number of our conflicting decisions may be properly eliminated from consideration upon the inter-state commerce question, upon the ground that our courts have not infrequently assumed congressional functions. This class of cases forms a species of judicial legislation, pure and simple. For it will be observed that the language of the Constitution is: "Congress shall have power to regulate," when in its legislative wisdom the public necessities require. It is quite different from those other clauses reading: "No State shall pass any law," &c.

This system of politico-judicial legislation is defended on the ground that when Congress means to regulate it legislates, and when it (Congress) means that a subject matter shall be free from all regulation it says nothing, a sort of affirmative negation, and therefore no State has a right to say aught.

These courts have not always been mindful of the fact that it was to Congress power was given to regulate commerce and not to the courts.

But while this doctrine has been announced in a few cases by the Court, and strenuously advocated by a few individual judges, yet it is believed that an unbroken line of decisions may be found in our Supreme Court, extending from those of Cooley v. Board of Wardens, 12 Howard, 299; Gibbon v. Ogden, 9 Wheat 181, down to and including the Granger cases, holding that in the absence of Congressional action, State legislation in matters of inter-state commerce, will be upheld as constitutional and valid. Especially is this true in matters of State legislation affecting inter-state commerce, where the free interchange of commodities between States is not seriously interfered with, as in the case of the regulation of bridges across navigable rivers. Escanaba Company v. Chicago, 107 U. S. 678.

Another cause of the irreconcilable condition of our decisions upon inter-state commerce is owing to the fact that we have not kept in view the fundamental distinctions between subjects sought to be regulated. For instance, commerce carried on upon our navigable rivers is not analogous to that carried on upon railroads. Navigable rivers know no State lines; are as free to all who use them as the high seas; are not

creations of State or nation. While, on the other hand, railways while in one sense public highways, are owned and managed by corporations, which are creations of the State; exercise franchises granted and grantable only by the State; are to a great extent monopolies, and can extend only to State lines. The moment they go from one State into another that moment they look to a new source of authority for power to act, as well as to exist. And hence it would seem that the power of the State to regulate and control in the latter case would be unquestioned, if looked at from a logical stand-point.

Again: Is it a matter of national concern whether a corporation of Illinois charges a citizen of Illinois for transportation four cents a mile or three cents a mile for services rendered? Very much of the legislation of Congress as well as the decisions of Federal courts for the past ten years has been as if corporations were the especial wards of the government.

It would seem to be fundamental that the legislature of each State has a right to create corporations, and by charter fix the conditions on which their business shall be carried on, and among other things to fix the rate to be charged for transportation. If the charter is a contract and the contract prescribes no rate, wherein is it different from all other contracts in that the charge shall be reasonable? This is the established law of this country applicable to transportation companies, corporations and individuals alike.

But where does the right to regulate and control the rates cease? This question has been answered by a divided court in the late Wabash case, wherein it has been held that the Illinois law regulating freight and passenger rates is unconstitutional and void when applied to inter-state commerce. Commerce is traffic; it is intercourse, and as we have seen embraces the instruments by which traffic or intercourse is carried on. Inter-state commerce is the buying, selling and exchange of commodities between a citizen of one State and a citizen of another State, and also includes the instruments by which it is carried on. The constitutional clause in question, if for any purpose, was designed to facilitate the free and untrammeled exchange or sale of the products of one State in the marts of

another State. It was a veritable free trade enactment. If, therefore. the Legislature of Illinois enacted a statute designed to prevent extortionate charges and to secure reasonable rates for transportation, and thus enhance the fair and liberal exchange and sale of commodities, does such statute impinge upon the domain of Congress, in the absence of Congressional action? Prior to the Wabash decision the answer was no, but by the majority decision in that case, yes, if peradventure the road, vehicle or instrument extended beyond the Illinois State line. The logical result and effect of the decision is this: A citizen of one State desiring to sell his property in another State, employs a railroad company chartered by his State to transport such property for him to its place of destination. He cannot call to his aid the laws of his State to secure a reasonable maximum charge for so much of the services as are rendered in his State because he would thereby be invading the domain of Congressional right of action on a subject upon which Congress had hitherto remained as silent as the tomb. In other words the statute of the State of Illinois, having for its object the securing to every person, rates of transportation at such minimum cost as will compensate the carrier and secure the shipper an enhanced profit on his wares and thus promote the interests of commerce, internal, inter-state and foreign, is unconstitutional and void, and that too, in the absence of any attempted regulation by Congress. It is insisted, therefore, that the majority decision of the Supreme Court of the United States is not well founded in reason, is contrary to the spirit of our government, and instead of fostering inter-state commerce is in effect disastrous to the free exchange and sale of commodities which our constitution was designed to secure. In a word the spirit of our constitution is wounded in the house of its friends. That the decision in that case is contrary to precedent, not sustained by sound constitutional construction and unfounded in reason, we shall hereafter attempt to show.

Jno. W. Smith.

We reprint the following cases from the Canadian Law Times.

SUPREME COURT OF NEW BRUNSWICK.

In re FAIRLEY AND WILSON.

Arbitration—Award—Uncertainty.

An award ought to be so certain that no reasonable doubt can arise on the face of it as to the arbitrators' meaning, or as to the nature and extent of the duties imposed by it on the parties; and if it be doubtful whether the award has decided the questions referred, it will be set aside for uncertainty.

Two partners being possessed of a considerable quantity of real and personal estate, and having a large amount of debts due them, desired to dissolve the partnership, but being unable to agree upon terms, submitted all matters in difference between them to arbitration. The arbitrators awarded that one of the partners should pay the other a certain sum in full payment, discharge and satisfaction of all moneys, debts and demands due or owing by him to his copartner upon any account whatsoever.

Held, that the award was bad for uncertainty—there being no decision respecting the partnership property.

QUIDDY RIVER BOOM CO. v. DAVIDSON.

Crown grant—Bed of tidal river—Riparian owner—Public right of navigation—Injury to piers in the tide-way—Injunction to protect rights of riparian owner—Assessment of damages by consent, right to appeal from.

A grant by the Crown of a tract of land fronting on the shore of the Bay of Fundy described it as commencing on the Bay shore and running a certain course and distance inland, thence along the exterior lines of the tract till it again met the Bay shore at a different point, and thence following the Bay shore to the place of beginning, conveys to the grantee the bed of a tidal river, which runs through the land, and discharges into the Bay between the starting point of the grant and the place where the line again strikes the Bay shore.

The Provincial Act, 45 V. c. 100, passed since the British North America Act came into force, is ultra vires, so far as it professes to authorize the erection of piers and booms in a tidal river.

Piers erected in the river, under the supposed authority of the Act, become the property of the owner of the bed of the river; but may be used by persons navigating the river, for the purpose of protecting and securing lumber floating down the river, and to prevent its loss by floating out to sea.

What will be a reasonable use of the piers for that purpose, will depend upon the quantity of lumber in the river, and the state of the tides, winds, and currents at the time.

Where lumber, floating down the river in the course of navigation, is left by the tide on the shore between high and low water mark, without any negligence on the part of the owner of the lumber, it is not an improper interference with the right of the riparian owner, if it is removed within a reasonable time.

Where on an application for an injunction to restrain the erection of piers and booms in a tidal river, the bed of which belongs to the plaintiff, and to prohibit interference with his riparian rights, it was agreed that the Judge should assess the damage which the plaintiff had sustained by the acts of the defendant, the amount assessed is not the subject of appeal it being mere matter of agreement, and no part of the duty of the Judge under the Equity Act.

SUPREME COURT OF NOVA SCOTIA.

O'BRIEN v. THE CITY OF HALIFAX.

Municipal corporation—Negligence—Notice of action—Service on Mayor—Non-suit—Findings of Jury.

The Halifax City charter, Acts of 1864, c. 81, s. 276, provides that "no action shall be commenced against the city till 20 days' notice in writing shall be given," etc. The plaintiff proved a notice addressed to and served upon the Mayor of the City "that, after the expiration of 20 days from the service upon you of this notice, an action at law will be commenced in the Supreme Court against the City of Halifax at the suit of Mrs. B. O'B. to recover damages for injuries sustained by her in falling over an unprotected embankment on Campbell Road, owned by the city.

Held, that the notice was sufficient in all respects.

Held, also, that, in the absence of any special provision in the city charter for service of process upon the city, the service upon the Mayor was sufficient.

Held, also, that a motion to non-suit the plaintiff on the authority of Wright v. The Midland Railway Co., 51 L. T. N. S. 539, was properly refused.

Held, also, that the negligence of the defendant having been clearly established, and the question of contributory negligence having been left to the jury, who found in favor of the plaintiff, the judge presiding was obliged to enter judgment in accordance with the findings, and the judgment so entered should not be disturbed.

Department of Medical Jurisprudence.

SCOTT HELM, M. D., Editor.

THE MEDICO-LEGAL ASPECT OF CRIMINAL ABORTION.

BY D. A. K. STEELE, M. D.,

[Professor Orthopædic Surgery, College of Physicians and Surgeons. Read before the Chicago Medico-Legal Society Oct. 3, 1897.]

Mr. President and Members of the Society:

When I was requested to prepare a paper on the subject of criminal abortion for this society, I hesitated because I felt that I could present nothing new. The whole field has been gone over again and again by abler minds and readier writers than I, but old truths must be retold and old errors and present crimes must be exposed, and an earnest, honest effort made to stamp them out, or we, as physicians or lawyers will be derelict in our duty to society and dishonor our manhood. Hence, I will briefly present a few thoughts for your consideration and discussion limiting myself to the medico-legal aspects of criminal abortion, and eliminating entirely from the discussion all reference to accidental or natural abortion or to artificial abortion induced for the purpose of saving the mother's life, except in so far as such reference may be necessary for clearness of expression or to qualify statements. Neither will any reference be made to the medical or surgical treatment of induced abortions, except in the same qualifying sense. By criminal abortion or fœticide I mean the interference with the life of the fœtus from the moment of viability. From the male and female germs united, an impulse is generated that results in the formation of a new being, a human embryo, powerful with potentialities for future weal or woe. Theologians and biologists agree upon this as the period upon which independent life becomes an attribute of the fœtus.

This new human organism is rapidly developed, and in the fourth month it differs only in size from its condition at birth, while the organs of special sense are developed simultaneously with the brain.

We as physiologists cannot agree with Aristotle that "forty days" are necessary to viability, nor with old legal fossils who held that a human embryo is not a human being until its birth.

On the contrary, we hold that from the very first moment of impregnation, the fœtus differs only in degree and not in kind from the infant and adult. It is a human being with an inalienable right to life, and its destruction is homicide.

I am aware that among the Stoics it was considered that the soul was not united with the body until respiration took place, and that in England the common law considered that life did not begin until the period of quickening; and the law until recently drew a distinction between an abortion induced before or after quickening, the first being regarded as a felony, while the latter was a crime, punishable by death. This distinction has been repealed, and now an attempt, even though the woman is not pregnant is regarded as a crime.

The Massachussetts law provides that:

"Whoever knowingly, with intent to procure miscarriage of a woman unlawfully administers to her, or causes to be taken by her any poison, drug, medicine or other noxious thing, or unlawfully uses any instrument or other means whatever with the like intent, or aids or assists therein, shall, if the woman dies in consequence thereof, be imprisoned in the State's prison, not more than twenty, or less than five years. If she does not die, not more than seven, or less than one year's imprisonment, or be fined not exceeding $2,000."

The same law and punishment essentially obtains in Illinois, I am informed.

Now as to the frequency of criminal abortions and the necessity for concerted action for its more certain punishment, a member of the New England Divorce Reform League, Mr. S. R. Dyke, states that over six thousand women die yearly in the United States from attempts to destroy unborn children.

Dr. H. D. Chapin, of New York, states that from 1870 to 1885 there were 35,639 still births reported against 370,757 live births, or a proportion of 1 to 10 $\frac{44}{100}$.

Out of 8,000,000 births reported by Tidy the proportion of

still births was 1 to 18. In discussing a paper presented to the Chicago Gynecological Society, Nov. 22nd, 1884, by Dr. Edward W. Sawyer, on "The Treatment of Abortions," Dr. John Bartlett stated that in his experience "abortions were as frequent as labors at term." No matter how unreliable statistics may be, abortions are frightfully common—nearly, if not quite equal, to births at term in the larger cities. It is acknowledged by every one, and we physicians are made painfully aware of the moral turpitude of those who seek to avoid the reponsibilities of maternity.

There are creatures in our profession who will lend themselves to carry out the wishes of such persons for money, and thus become assassins of unborn children—*hired murderers!* The question arises whether we are ever justified in sacrificing the life of the child to save the life of the mother. This is a mooted question, and must be answered by every physician according to his own conscience. In cases of pelvic deformity, where the child cannot be born alive at full term, no one physician should assume the responsibility of deciding that the life of the child must be sacrificed to save the life of the mother, but when a counsel of two or more competent physicians decide that by reason of maternal pelvic malformation natural labor at full time cannot occur, then the question of the consideration of the induction of a premature labor, a Porro operation or Cæsarean section must be decided, and upon the decision of this question rests the immense responsibility of sacrificing one life to save another. Is it right to do it? The mother's life and position in the world and her value to the family and society is a known quantity in the problem, but who can tell the possibilities of an unborn child? or how much more useful to society he might be than the mother for whose sake he was sacrificed? Who can answer? They are in mutual danger with the almost necessary forfeiture of both lives if one is not sacrificed to save the other. A parallel case in real life was tried in England recently, where three men were adrift at sea in an open boat, starving. One of them was killed by his companions who drank his blood in order to prolong their existence. After a most exhaustive trial these two men were found guilty of willful murder and suffered the extreme penalty of the law.

In regard to criminal abortion, do physicians ever lend them-

selves to it? Does any one present for a moment deny that members of the medical profession do commit criminal abortion, do commit abortions for a variety of reasons not recognized by medical ethics or the law—for money, or to relieve an innocent girl from shame; to relieve an overworked woman already an invalid from frequent child-bearing; from the risk of another labor, or to enable a woman of fashion to continue her rounds of gaiety and pleasure without the annoyance of the duties incidental to maternity. As charitable physicians, we are forced to accept one or the other of these excuses for the commission of this most heinous crime of modern society. We know—to our sorrow and disgrace—that there are such men in the medical profession and the question for us, as members of a Medico-Legal Society, to consider is how can we bring these assassins within the pale of the law. The law prescribes a definite punishment for them, but it seems almost impossible for the law to reach them. I presume we have all had cases come under our personal observation where a *doctor* had produced an abortion upon some patient of our acquaintance after a reputable physician had declined to listen to her importunities.

I do not think we can be in doubt as to these statements made by different patients and in several cases verified by myself as to who these "abortion doctors" are. I know we cannot be deceived, so we will acknowledge that there are abortionists—abortionists in the ranks of the medical profession—not limited to the patients themselves, not limited to the women themselves who are in *trouble* and want to be rid of their responsibilities. Are we cowardly enough to lend ourselves to their plea for relief, in the interests of humanity to save them from impending disgrace, or are we brave enough to plainly explain the full consequences of the hideous crime they implore us to commit, and awaken some spark of the dormant moral responsibility that must be kindled in every woman's heart if we but touch the right chord. There is an instinctive desire to do right in every woman's heart, and if she is properly acquainted with all the phases of this subject, we can usually rely on her better judgment aiding her in the right line—but, alas, too often her mind has been warped or twisted by the evil advice of her betrayer or husband, or too often the professional abortionist helps her out and kills, not only the unborn child, but

the germs of moral responsibility; and all for *blood money*. Is the commission of murder justified by the feeling or sentiment that a young woman's honor has been saved by preventing her disgrace becoming known? Do the means justify the end? Is it humane? Society is largely to blame for the present state of feeling on this subject; for the low moral tone that permeates every fibre of society. We need more social purity, more members of the "White Cross Society."

The law is also to blame for drawing a distinction between a human life before or after quickening, and to draw a distinction in the punishment of crimes that are identical. Our duty to society and to these patients demands that we should absolutely refuse to lend ourselves in any way to their importunities and that we should take special pains to educate them aright to a correct knowledge of their responsibilities; to let them understand that they are not only incurring great risks to their life and health, but to their future happiness as well as great risks of inability to bear children in the future, and, above all, that it is an actual crime punishable with a definite punishment.

Now, as to the punishment of these abortionists, we well know that there are certain inherent difficulties in the way. A woman goes alone usually. She does not take a witness. She seldom makes a confidant of any one unless she fears she is going to die, and even then she will sometimes in her ante-mortem statement refuse to give the name of the man whose act has put her life in jeopardy. At the time of the abortion, when the illegal act is committed. there is no third party present—no one but the physician and the patient. If the woman dies, there is no evidence except the post-mortem appearances and sometimes an ante-mortem statement; hearsay evidence is not admissible—hence the very small number of convictions. If the woman recovers, she refuses to testify, and conviction is impossible. During the twelve or thirteen years I have lived in Chicago I can recall but three or four instances in which an abortionist has been convicted and sentenced for the crime, although a very large number have been arrested and indicted. Still they managed to escape punishment. At present, there is in our County jail a physician awaiting trial on this charge. Another, formerly a reputable

physician and holding public office, is out on bail, and still another is in Joliet penitentiary. So that punishment does reach a few of them, but far too infrequently.

How can we make the paths of these murderers a little more stony? So that we may not daily see them riding in their carriages on our streets, holding membership in our medical societies —some of them, perchance even in this society. If you indicate how we can get rid of them in this age of progress and enlightenment in the nineteenth century a great advance will have been made. I will cite a case that came under my observation this year in this city that will point out to you the unparalleled depravity of one of these murderers and the difficulty of meeting out punishment. Now, I am very glad to state that the case I am about to cite was not produced by any physician in this city or State, but the crime was committed right here, and as I detail the case you will see the alleged reasons for bringing the girl from a neighboring State to Chicago for the perpetration of a crime—fœticide.

CASE.—Miss — age nineteen, resident of Fort Wayne, Ind., became pregnant under promise of marriage.

As soon as she found herself pregnant, she went to Dr. —, who advised waiting until she was further advanced. When three months had passed he promised to commit an abortion, but could not in Indiana on account of the law; $50 was the sum agreed upon, and he promised to operate upon her. The doctor and his victim started for Chicago, but stopped at Englewood, he explaining that Englewood was in Indiana and Chicago over the line in Illinois. Therefore, he would perform the abortion in Englewood and leave her in Chicago for subsequent treatment so as to avoid the Indiana law. On the road he gave her wine to drink and other stimulants on the plea that it was preparatory treatment, and when she arrived in Englewood she was pretty well drugged.

After accomplishing his purpose and committing a double crime, he brings the girl to Chicago and leaves her, saying he will come in a few days and gives her an Ergot Mixt. Pains come on that evening and continue all next day and next night, when the abortion is completed.

POINTS OF INTEREST.

1. The great desire for operation—the fulcrum to make her yield to his plans.

2. Representing Englewood as in Indiana, where his diploma would cover his practice, i.e., in Chicago he would be liable to arrest, etc.

3. Moral degradation of a doctor (?), having a wife and children and graduate of a regular medical college of Indiana.

4. Abandoning her to the care of strangers and the attention of any physician who might happen to be called in.

5. Subsequent denial that any abortion had been produced.

Now this case has not been prosecuted, and why, you may ask, when I have such positive proof as the statement of the girl, corroborated by her sister and a friend, and have in my possession the products of conception prematurely expelled by reason of this man's criminal interference. Why did I not prosecute him? Because he left the State immediately after performing the abortion. I was not in charge of the case, only being called in as consultant by the physician who was called to treat the girl when her life was imperiled by hemorrhage following the performance of the abortion, but the essential reason why he was not prosecuted was the absolute refusal of the girl to testify against him. She did not desire the facts to come out.

Could he have been indicted here? Could he have been brought back for trial upon a hearing of the case? Could the girl have been obliged to testify against him? I should like to have this man brought to justice. I am willing to take the proper legal steps against him, and if what I have stated upon the general subject of "Criminal Abortion" is sufficient to awaken an interest in this matter that may result in a more certain and speedy punishment of crime, and lead us all to consider our moral obligations to society, then this incor plete paper will have served its purpose.

MEDICO-LEGAL SOCIETY OF CHICAGO.

Stated meeting held Oct. 1, 1887, Parlor 44, Grand Pacific Hotel. President E. J. Dœring presiding. There were forty in attendance.

The minutes of the last meeting were read and approved.

The following amendment to the constitution, to be known as Article IV, Section 4, notice of which was given at the June meeting of the society, was unanimously adopted:

The society may elect by unanimous vote distinguished physicians and lawyers to honorary membership. Moreover, such members shall be exempt from assessment and payment of all dues, and shall enjoy the privileges usually accorded to honorary membership.

Dr. Frank Billings and Dr. Truman W. Brophy, having been recommended by the Executive Committee, were elected acting members of the society.

The following distinguished gentlemen were unanimously

elected to honorary membership: Gen. John C. Black, Hon. Commissioner of Pensions, Washington, D.C.; N. S. Davis, M. D., LL.D., President Ninth International Medical Congress; Clark Bell, Esq., President New York Medico-Legal Society, and J. Adams Allen, M.D., LL.D., President Rush Medical College.

Ex-President D. A. K. Steele then read a very able and interesting paper on "The Medico-Legal Aspect of Criminal Abortion," the discussion of which was opened by Judge O. H. Horton, who said: "This topic presents clearly one question showing the wisdom of the organization of this society. In matters of medical jurisprudence especially, physicians and lawyers should stand side by side, working together for the common good. By so doing, much might be accomplished by ridding both professions of charlatans and shysters—the leprous excrescences that fasten themselves on both professions." He regarded, as do also the statutes of Illinois, abortion and miscarriage as synonymous.

At one time it was no offence to procure an abortion, if done with the woman's consent, unless the woman was "quick with child." If after that time, the child was held to have a separate existence and its destruction was deemed to be highly criminal, but a misdemeanor only, and not a felony.

Our State, however, changes this rule and makes it a felony, the provision of our statute being as follows:

"Whoever by means of any instrument, medicine, drug, or other means whatever, causes any woman pregnant with child to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the penitentiary not less than one year nor more ten years, or if the death of the mother results therefrom, the person procuring or causing the abortion or miscarriage shall be guilty of murder."—(R. S., 1845, p. 158, s. 46, L. 1867, p. 89, s. 1, 2, 3.)

The offence is the same in the eyes of the law of this State without regard to the period of pregnancy. This fact that the law does not discriminate in regard to the period of gestation should be clearly understood by the medical profession. The law should be understood still further as to what constitutes murder in this class of cases. The deceased must have been a human being, and an unborn child is not a human being within the meaning of the statute. "If, however, a child receives an

injury while it is yet unborn and it is afterward born alive and then dies," by reason of such injury, "the person doing the injury," if it was willful and intentional, "is guilty of murder."

"So if a person intending to procure an abortion does an act which causes the child to be born alive before the natural time, and consequently less capable of living, whereby it dies after birth from premature exposure to the external world, he is guilty of murder."

Cases of necessity for the preservation of the mother's life are not included.

The statute also provides a penitentiary penalty for advertising or in any way calling attention to or recommending any drug, nostrum or instrument to be used in the perpetration of this crime. The law is ample. Shall it be enforced, and its violators brought to justice? The difficulties of conviction in these cases lie first, in the great secrecy surrounding the act. There are no witnesses and the principles will never expose themselves. Again, the absence of evidence is often insurmountable, and here, especially the inadmissibility of hearsay evidence is very wise, as the reputation of many a reputable person might be irretrievably ruined by the tales of irresponsible gossips. However, there are other crimes, though not many, around which there gather as many obstacles towards reaching the truth as in this class of cases.

In the minds of many there is an absence of moral conviction sufficient to educate the masses up in this question; but let the responsibility here be shifted upon the medical profession. There is no class of the community so brought into contact with the family or in such confidential relations as the physician Again, as to the general absence of all fear of detection, the best cure for that, that he might suggest, would be a few convictions, and the more elevated in position, and the higher standing of the person that can be reached for it, the more general would be the influence resulting.

Dr. Sawyer said: "I wish to correct an erroneous impression. I think Dr. Steele quoted me, in connection with Dr. Bartlett, as saying that criminal abortions were as frequent as labors at term. In the very meeting in which the paper was read I did not

quote Cazeaux and La Chapelle as saying, 'Abortions in Paris were as common as term.' I have never seen one tenth the number of abortions as I have labors."

Dr. Henrotin: "Having had many opportunities in former years to investigate the practices of physicians, I had the pleasure of being instrumental in bringing to the bar of justice several of these criminals and also of aiding in sending two of them to the penitentiary, and so brought out a realizing sense of points in which physicians are delinquent in their duties, or else helpmates to the criminals themselves. As regards the number of abortions, there is no question about the very large number that are being performed daily, in spite of all the words of warning; and the crimes become so frequent that we do not look at them in the same light as we did fifteen or twenty years ago. The idea of bringing a doctor to task for practicing abortion is hardly ever thought of. Every day we have experiences of that kind, but what are the things in the way? What is there to prevent, and and how can it be brought about within the power of the profession? How can we convict these people? First is the difficulty in bringing them to justice when the husband says: "Do not tell anybody this; do not make my shame public before the world. My wife is dead; what proof have I as to who did it?" What proof has the officer as to who did it? The secret way in which the thing is done makes it almost impossible to get admissible evidence. We cannot bring their families before the courts and this is one of the great difficulties in the way of conviction.

"We have all been brought to the bedside of a patient, on whom we were perfectly positive a criminal abortion had been produced. We cannot leave the woman to die, and since she can get a physician to perform any variety of abortion on her, with the utmost confidence in not being exposed, we are obliged tc accept the situation as best we may. Unless we can educate the people we will always find great difficulty in getting these criminals to the bar of justice. After you do get them there, the testimony in many cases will not point sufficiently to convict. Still further difficulty is experienced in improperly identifying medical experts before the court. We all know how physicians—the most prominent in town—may be brought to swear to the criminality of the

result of abortion, and after their testimony has been taken, some quack, who is only too glad to help his brother out of trouble, will be sworn, and his testimony has exactly the same weight with a jury as the most eminent and reputable man in the profession.

"When Dr. Earl was brought up, I sent him down to the penitentiary. I followed the case up closely. I brought out the uterus and showed it to the jury, when he claimed that the woman had never been pregnant and he was convicted on his own testimony. Here too, a South Clark street quack, was brought into the case, and his testimony had just the same weight as Dr. Byford's had. Earl tried to prove that no pregnancy had ever existed, but we brought out the uterus, showing the manipulations and the wounds of the instruments used.

"My experience in the past has been that these men usually convict themselves, and, so far as I know, there are only two cases of clear convictions—Brooks and his brother.

"Now, all these things stand in the way of conviction, and greater than every other is the peculiar status of the public mind upon this very subject. Intelligent persons otherwise of the very first moral standing—ladies in every other sense of the word—come to you and tell you they cannot afford to have any more children, that they do not propose to have any more than they can raise, and ask you to relieve them. They tell you if you do not do so, Dr. So-and-So will, and after he has accomplished the fact you meet him next week and bow to him as pleasantly as if nothing unusual had transpired.

"There is certainly a very large field for this society in educating the general public, but we might effect a great deal by seeking out these criminals and convicting them to the best of our ability."

Dr. H. T. Byford called the attention of the society to an institution in this city where the proprietor ran an establishment for this class of cases and kept attendants to wait on them, reporting a case which had come to his attention where the operation was claimed to have been performed here. He considered the larger number of abortions in the upper classes of society to be criminal, whereas in the lower classes they were mostly accidental.

Dr. Moyer and Dr. P. S. Hayes discussed the subject, re-

porting cases. Dr. Moyer requested the opinion of the society in regard to the diagnosis of a supposed case of criminal abortion which he reported. Dr. Hayes said it was very uncommon among those of the Roman Catholic faith, giving as the reason therefor that the priests thoroughly inculcated the idea of the heinousness of the crime.

Dr. E. W. Sawyer, Chairman of the committee appointed at the March meeting to take action, looking to the remedying of the defects of the present system of coroner's inquests, made a verbal report, in which he called attention to the difficulties which existed in obtaining suitable legislation in behalf of their subject, owing to the fact that the office of coroner is one of the most remunerative in the county public service. This committee also submitted to the society a "Law Concerning Medical Examinations" in effect May 9, 1887, in the State of Massachusetts, and entitled "An Act to Abolish the Office of Coroner, and to Provide for Medical Examinations and Inquests in Cases of Death by Violence." In accordance with a motion made by Dr. Steele, the committee was continued, being directed to modify the act to meet the exigencies and requirements of the State and to report at some future meeting of the society.

Notice was given of the following proposed amendment to the constitution to be known as Art. III, Sec. 5: "An auditing committee consisting of two shall be appointed at the meeting preceding the annual meeting."

The society then adjourned.

SCOTT HELM,
Secretary.

CRIMINAL ABORTION.

Upon the subject of criminal abortion we may observe that the philosophical, ethical or legal questions involved are not of a difficult nature to the educated physician or lawyer, but the practical methods of dealing with the subject are attended with embarrassments not easily overcome or satisfactorily solved in the scope of the duties of either profession.

The laws governing the subject may be said to be embraced mainly in five sections of the Statutes of Illinois, viz., sections 3, 4, 5 and 6 and 274 of the Criminal Code. This Code defines the

crime and prescribes the punishment at a term in the penitentiary of from one to ten years, and in case the death of the mother ensues therefrom, the crime shall be murder and punished as such.

Section 4 provides a fine of from $50 to $100, or a term in the county jail of from one to six months or both combined, for any druggist who shall sell any drug known or presumed to be abortifacient, except upon the prescription of a well-known and respectable physician, or who shall keep for sale any medicine especially designed for the use of females, without keeping the certificate required by section 5 as to the fact that such medicines are not abortifacient.

Section 5 provides that before any druggist shall expose or keep for sale any medicine expressly for the use of females, he shall submit to five well-known and reputable practicing physicians of the county the sworn statement of the proprietor of such medicine to the formula by which such medicines are compounded, and procure their certificate that the same are not abortifacient; and such formula and certificate shall be kept for the inspection of any person desiring to see the same.

Section 6 affixes a term of not exceeding three years' imprisonment or a fine of not exceeding $1000, to the offence of advertising any such medicine or any such business to the world in any manner whatsoever.

Section 274 relates to accessories before the fact, and provides that any one who aids, abets, assists, advises, or encourages, in the commission of a crime, shall be considered as a principal and punished accordingly.

From all of the above, two observations in chief may be submitted:

First: That the subject in the majority of cases suggests the existence and agency of an accessory. In the case of an unmarried female it will, in almost every instance, be found that there is a conspicuous accessory, even though he be conspicuous by his absence, or unwillingness to stand sponsor for those incidents which pertain to his position.

Second: That the attempt to procure an abortion or miscarriage is a crime in the same degree whether the female be actually

pregnant or not, or whether the operation prove successful or result in a failure. This was for a while a disputed point, but has been judicially settled in England in the case of Regina v. Goodloe—(1 Bishop on Criminal Law, 741)—under a statute of which our own is a copy.

In that case, the defendant was held to be guilty although the evidence showed affirmatively that the woman supposed to be pregnant was not so, in fact. This was determined in 1846 and has been reported in three different reports, and is frequently cited in pocket-picking cases, where the prisoner is caught in the attempt to pick a pocket which was innocent of a purse or other valuable article to reward the efforts of the would-be thief.

To the above may be added this further observation on section 3, that the only justifiable act of the profession under the the law, in attempting or procuring an abortion or miscarriage, is when the same is done as necessary for the preservation of the life of the mother.

In regard to the question of the justifiability of the act in a case of puerperal mania, while the letter of the statute makes the saving of life the only exception, it may be said that in a clear case, and one strongly appealing to the sympathies and generous nature of the medical advisor, it would hardly be expected that a charge of criminality would be urged or, if urged, that it would be sustained by any judge in the land

The question of ethics being one which appeals solely to the conscience, or professional approval, must be settled by each one in the profession when called upon to settle it, according to a standard which no one outside of the profession has the right to set up or adjust.

The foregoing embraces in outline the legal provisions which affect the subject of criminal abortion, and their application in the enforcement of the law against the alleged criminal, and, of course, calls for a knowledge of the law of evidence in general and particular, so far as applicable to this subject, and those who hold to the doctrine that the machinery of the law needs mending, are those who witness the frequent failures or the general inability to convict in cases of certain classes, and at once come to the conclusion that the law and rules of evidence must be

amended in order that the accused shall not enjoy so many opportunities for escape.

The learned and conscientious member of the medical profession, who has by experience learned the innate difficulties and dangers which arise in dealing with human life and human frailty, will not readily yield to the sentimentality of those who pass through no such ordeals, and will, of all others, realize the necessity for all the safeguards which the law can throw around the innocent and the upright, even though the guilty may not be convicted, as the result of that care which the law has for the innocent.

The members of the medical profession will, of all others, appreciate the charity of that law which recognizes that many of their duties are performed at the bedside of the weak and in the chamber of the dying, and that for many of their own acts they have no other witness than their own conscience and the eye of an unerring justifier.

If the hearsay of everyone, the idle gossip of a neighborhood, or the invidious accusations of rivals or incompetent men were to be received, where would any man find safety? The careful and conscientious physician will, of all others, lend the most hearty endorsement to the closing lines of Prof. Greenleaf's first volume on the law of evidence, wherein he says: "The student will not fail to observe the beauty and symmetry of this branch of the law, under whatever disadvantages it may labor from the manner of treatment, and will rise from the study of its principles, convinced with Lord Erskine that they are founded in the charities of religion—in the philosophy of nature, in the truths of history, and in the experiences of common life."

If, in the prosecution of offences arising under these legal provisions, it be found that the proofs are deficient in many cases, let it not be charged that it is due to the needless technicality of the law, or the rules of evidence. If it is a subject in which knowledge of the fact is confined to a few persons, the sources of evidence will, of necessity, be limited, for it is knowledge of facts that must secure conviction, and not every hearsay or limitless conjecture—that which has been actually done, and the closest and unmistakable purpose for which it was done, and not unde-

fined suspicion pertaining to things, which, from the delicacy of their nature among refined and cultivated people, are not exhibited in the most open and public manner.

The physician cannot always know the real motives of those who employ him in relation to matters which pertain to the innermost recesses of the domestic circle, neither can he be always sure as to the fidelity with which his confidences in the heart of the household will be maintained or justified. Hence those rules which are founded "in the charities of religion, in the philosophy of nature, in the truths of history, and in the experiences of common life," must not be relaxed or abandoned, for if they are, the wisest and most prudent and circumspect may often find themselves the victims of misplaced confidence when in the discharge of the most important duties, and in the exercise of the highest skill and greatest integrity.

Ordinarily, the pregnant mother, as well as the father of the unborn child, are parties in intent to the proposed or alleged crime. The operator is only their hireling, and those who employ him to commit the crime on their behalf are not likely to divulge the guilt which is common to all.

In the case of the death of the mother the grave encloses her share of the secret, along with her power to divulge the authors or the circumstances which attend it in most cases, the exception to this being the very instances in which the pendancy of the victim's death becomes known to those who could or would in proper form procure an ante-mortem statement, under such limitations as would warrant its use in evidence.

In case of the recovery of the mother, whether married or single, if the facts become known to a reasonable certainty to those who would prosecute, there is always some chance of securing her testimony by strategy or compulsion, as the danger of her conviction affords a leverage of some potency if wielded by a skillful director.

Every effort possible should be made to expose this fearfully prevalent crime and secure the conviction of its perpetrators and accessories, and when this is done, and not till then, will this hydra-headed monster cease to stalk through the land.

EDITORIAL NOTES.

MR. BONNEY AND THE SUPREME COURT.

OUR 'REMEDY IN THE LAWS." BY C. L. BONNEY, OF THE CHICAGO BAR; AUTHOR OF "RAILWAY LAW FOR RAILWAY MEN." CHICAGO, 1887. —This is the title of a pamphlet of some forty pages, which was printed and circulated in this city a few months ago.

That it should have emanated from a respectable law office, will be a matter of surprise to those of our readers who have not seen it, when they shall be apprised of the nature of its contents.

It is directed against the State government, but more especially against the judicial department of that government, and still more especially against the Supreme Court of the State, as the highest tribunal of that department. If any person, after reading the pamphlet, has remaining any respect for the supreme judicial tribunal of his State, it is not because the author has not done all he could to destroy that respect.

Of the language indulged in, the following may be taken as specimens:

"Not long ago a case was decided by the Supreme Court which contains, in my judgment, a shocking commentary on our so-called administration of justice, and well illustrates how the abilities of the officers of the greatest department of our government are perverted to the useless solution of such technical objections or exceptions as may be discovered by sharp lawyers.

"If two persons have litigated a matter in the trial court and its judgment is appealed from, the natural supposition of common people would be that the functions of this governmental department, in reviewing the appeal, were to consider the right and justice of the subject matter of the controversy, and decide accordingly; but the decision now referred to indicates that the hired men of the judicial department care little for right, justice or merit.

"A judgment of ejectment had been entered against a man named Martin, and an appeal from this judgment was taken to this debating society of legal technology," &c.—[p. 5.]

"Our custodians of the remedy in the laws," he says, "discovered a microscopic technical point."—[Ibid.] * * *

"That the Supreme Court has 'uniformly refused to consider' the erroneous rulings of trial courts, merely because of some stupid mistake of form, and which could not affect the justice, substance or merits of the case, is an official declaration of impotency, the boldness of which is exceeded only by its unjustness."—[Ibid.] * * *

"These cases illustrate the deplorable uncertainty that exists in one distinct department of our State government. From them it appears that if any legislative act is submitted to the hired men of the judiciary for review, it may be strictly construed to produce one result; it may be liberally construed to produce something else;" &c.—[p. 8.] * * *

"It should be remembered that in almost every case in which aldermanic jobbery for railroads has been submitted to the Supreme Court for review, that jobbery has been consummated only by legal quibbles and unjust technicalities through the aid of the judicial department of the State."—[p. 11.] * * *

"These jugglers of legal technics have done more to unsettle confidence in the laws, breed contempt for courts and create fears that the supposed protection of law was inadequate, than the wild harangues of socialists. Bomb throwers and riotous strikers, without wealth, influence or intelligence, may be promptly dealt with; but wealthy conspirators and criminals with unlimited influence and unbounded cheek, aided by this juggling with the law by friendly courts, march onward triumphant and unrestrained."—[p. 13.] * * *

"Governments are not corrupted by socialism and anarchy; it is the corruption of the government by monied conspirators and unreliable courts which begets the socialist."—[Ibid.]

Such is the language used and such are the charges made by Mr. Bonney against the Supreme Court of Illinois. And upon what grounds? It may be well to glance at one or two of the decisions which are so outrageous in Mr. Bonney's eyes. For instance, take the case of Martin v. Foulke, 114 Ill. Rep.

The Supreme Court, in that case, simply held that they would not consider an error which did not relate to the pleadings or appear on the face of the judgment unless it had been excepted to in the court below, and the exception embodied in the Bill of Exceptions. This Mr. Bonney looks upon as the quintessence of injustice, based upon a technicality. But it is no technicality at all. It is a rule of practice, resting upon sound reason. For, if the decision is excepted to in the Court below, the Court, being notified that the ruling is to be relied upon as erroneous, may examine the law or reflect upon the matter more carefully, and perhaps change his opinion. Whereas, on the other hand, he has a right to look

upon the failure to except as an acquiescence in the justness and correctness of his ruling. And yet for adhering to this uniform and correct rule of practice the Supreme Court is charged with "perverting" their abilities "to the useless solution of such technical objections or exceptions as may be discovered by sharp lawyers." Upon the strength of such a decision he charges that "the hired men of the judicial department care little for right, justice or merit."

Another instance will be given to illustrate the degree of fairness which is exhibited by the author in reviewing those decisions of the Supreme Court which fall under his special censure.

One case which he places under discussion and criticism is, McCartney Attorney General, v. Chicago & Evanston R. R. Co., 112 Ill., 611.

After reciting various provisions of the Constitution of 1870, he says:

"Now let me use a few illustrations of the manner in which the hired men of the judicial department have failed to apply these commandments," &c. * * *

"At the time this constitution went into effect the Chicago & Evanston Railroad Company was existing, under a special charter passed in 1861 and amended in 1865, and was at that time entitled to operate its cars 'with animal power only.'"

Here the statement is made in such a way as leaves upon the mind of the reader the unavoidable inference that it was by the charter of 1861 or by the amendment of 1865, that the company was limited to animal power only. But it was neither the one nor the other. It was an ordinance passed by the City of Chicago, in 1864, which, as construed by the Company in accepting it, placed this limitation upon the Company. This difference is a material and vital one; so much so as to cause all the subsequent criticism to fall harmless to the ground.

Having thus laid the foundation for his censure, Mr. Bonney says:

"In 1883 the Common Council passed an ordinance authorizing this horse-car corporation to conduct 'all general business incident to railroads, by freight, passenger and other cars, or by steam or other power.'

"The constitutonality of this ordinance was presented to the Supreme Court, (112 Ill. 611), but what was the result? The majority opinion mildly dismisses this important constitutional question without discussion and by this feeble remark: 'We cannot say that the charter of this company was not in operation at the time of the adoption of the constitution ot 1870.'"

Here the same idea is held out. The Company is called "this horse-car corporation," and the reader is given to understand that the question was raised, whether the ordinance of 1883 was not unconstitutional, inasmuch

as it authorized the use of steam, contrary to the charter; the charter having been granted previous to the constitution of 1870. But that question was not before the court, simply because, contrary to what the author would have the reader infer, the use of steam was authorized by the original charter, which authorized the Company to "operate a railroad, with horse-power or locomotive cars." Nor was any such point made by counsel. The validity of the ordinance was contested, but not on that ground.

From the want of any justification or excuse in the decisions referred to for the use of such violent and revolutionary language, it would naturally be suspected that there existed some other motive in the author's mind than the desire to make a fair or just criticism. And it does not take a very close examination to discover what that motive is—to discover that this is a political rather than a judicial publication—that the object is to render the present occupants of the Supreme Bench odious and unpopular, so as to make room for others in their place. From the following it will be seen that this object is not even concealed.

"There are seven justices of this court. The terms of five of them expire in June, 1888. The five that are elected at that time will constitute one more than is necessary to every decision. That majority will, in the succeeding nine years, have more control over the application of the fundamental principles of our State government than all the governors, senators and representatives who will hold office during the same length of time, as it may, by artful construction, fritter away the effect and intent of all executive and legislative acts, or even abolish the Constitution itself. The dangerous monopolies, conspiracies and pools which now threaten the safety of the nation well understand the importance of continuing judges in office who sympathize with their interests, and a desperate effort will quietly but surely be made by them to pack the Supreme Bench. Between now and the time of that important election, the common people will have abundant opportunity to fully examine the records of the court for the past nine years. It may be that life, liberty and the pursuit of happiness will be promoted by a clean sweep and a new deal," &c.

The political character of the pamphlet having been thus fully disclosed, it might have been passed by as a harmless piece of demagogism, had it not been published by a member of the bar, and issued from a respectable law office of this city. That fact makes it pertinent to inquire how far the members of the bar approve of such publications.

The author of the one in question is an officer of the court which he has thus maligned. If any other sort of officer had used the same language, he probably would not long maintain his official position.

NOTES OF TRAVEL

IN ENGLAND AND IRELAND.

Monday, June 1, 1885, I started from Euston Station for Belfast, by the way of Fleetwood. The country from London northwestwardly, on this route, was rather pretty—quite similar to that between Dover and London. It is open and destitute of large timber, though there are a number of groves, and a good many scattering, small trees.

There are many indications of large estates, but the farms in this region were somewhat broken into smaller holdings. Hedge fences most of the way—sometimes stone. Occasionally a few rails, but quite rarely.

The houses are brick. Though there are more farm houses than on the Dover road, yet the people here, also, seem to be living mostly in cities and villages. Thatched roofs begin to appear in central England. At 7 P. M. came to Preston, and an hour later arrived at Fleetwood. Here we took the steamer for Belfast, where we arrived at an early hour the next morning.

As I walked up the streets of Belfast, there was a singular appearance to the brick houses on either side of the street, which I could not account for until I noticed that the front doors all came down to the street; there being no platforms or front steps, and no basements.

9—30 A. M., started on the train for Port Rush. Passed through a handsome country. The land is more cut up into small fields than that of any country I had passed through in Europe. The farmers pay, for the use of the land, from 10s. an acre upward, running as high as £4, near the large towns. The people raise potatoes, corn, hay and flax. Fences are of stone and hedge. The houses, of stone, plastered, with thatched roofs. I have yet to see a wooden building in England or Ireland. In several places people were engaged cutting and preparing peat.

There is no doubt that the land legislation of the British Parliament has been of great benefit to Ireland. An Irishman in the car said he had a lease of about 6 acres which had yet some 20 years to run. He was paying £11—15s. per annum for the 6 acres. But the valuation placed upon it by the Commissioners was £7—10s., which was about what he would get it at, if there were no lease. Parliament did not, however, interfere with existing leases.

Port Rush is but eight miles from the Causeway. Here we took an electric tramway to Bush, six miles, and then an open carriage or wagon, for the remaining two miles. This was said to be the longest electric tramway in the world.

THE GIANT'S CAUSEWAY.

This, as is well known, is on the extreme north coast of Ireland, in the county of Antrim. The coast here is high and rocky, for some thirty miles. About sixteen miles of it abounds in a formation similar to that at the Causeway, consisting of jointed pillars or columns, closely wedged together.

Leaving the hotel, and going down to the sea shore with the guide, we got into the boats and visited two caves, and then the Causeway. The caves were interesting, but there are many caves, while there is but one Causeway. The landlord had said that the Causeway could not be visited to advantage, without the boats; which was simply a falsehood. The caves have nothing to do with the Causeway, and before visiting that, the boats are discarded entirely. The first cave is called Port Coon. It is 350 feet long, 45 feet high, and 20 feet wide at the entrance. After passing the entrance, one of the party fired off a pistol, which made a most astonishing sound, the noise reverberating in all directions. Water 14 feet deep. The other cave is larger, and 90 feet high.

There are various objects which the guide points out;—the Giant's Organ, with the pipes in front, 45 feet high, 60 or 70 of them—the Giant's Well, the Giant's Grandmother sitting on a stool, the Giant's Saddle, the Black Bear, the Camel, etc., etc., these all being rocks resembling those things. The well was a real well.

The Causeway itself consists of a tongue of land extending into the sea, which, at a distance, presents no unusual appearance. But upon reaching it, it is found to consist of an immense number of volcanic columns or pillars, resembling timbers driven into the ground, and wedged close together for a foundation for a pier or other structure. These are quite uniform in size and in shape, vertically, and are of a regular mathematical form, having from 3 to 9 sides. Most of them have 5, 6, or 7 sides. They average in size from 16 to 18 inches across, some being smaller, and others somewhat larger, but scarcely any being more than 20 inches.

These columns rise above each other various distances, ranging all the way from one inch to four feet. A large number of them, nearest the sea, rise in regular succession, as you go on land, but so gradually as to form a complete floor over which you can walk. You may proceed along on the

top of these columns, until, going to one side, you find yourself at an elevation of more than 60 feet from their base.

Besides the main group, there are some smaller groups; the total number of pillars being about 40.000. All have fissures or joints running laterally, and cutting them every 12 inches or less, generally, but sometimes at a greater distance, so as to resemble so many volcanic blocks laid one upon another. In some cases the distance between these joints is as much as 4 feet.

Near the center of the largest group is a column called "The Key," which may be considered a perfect octagon. Each of the 8 sides has a corresponding column, of the same size, and on the same plane, fitted as closely and nicely as if done by a skillful architect. This is the crowning feature of this, one of the greatest of nature's wonders. C. B. W.

BOOK REVIEW.

THE DOCTRINE OF CY PRES AS APPLIED TO CHARITIES; BEING THE MEREDITH PRIZE ESSAY OF THE UNIVERSITY OF PENNSYLVANIA FOR THE YEAR 1887. BY ROBERT HUNTER MCGRATH, JUNR. PHILADELPHIA:—T. & J. W. JOHNSON & CO., 535 CHESTNUT STREET. 1887.

The flexible character of the doctrine of cy pres has alone preserved it from oblivion.

Though it is, as applied in this country, essentially different from the English rule, which was, through so long a period, administered with so much ingenuity and refinement that some of the decisions appear whimsical, if not ridiculous, still, there is sufficient analogy between the law as it is and as it was, to render an examination of the English decisions important. Nothing can be disconnected from its history; and so it is with the doctrine of cy pres.

This history has been sketched in the small volume before us with much fidelity, and with a power of critical analysis which will give it great value to the profession, as a hand-book upon the subject.

After treating briefly of the prerogative branch of the cy pres doctrine, he comes to what more immediately interests us, the judicial doctrine upon the subject. This he treats under the following divisions:

First—Certain cases which are not enforced:

1. A gift, with no charitable intention, to a specific object of charity that fails.

2. A gift in trust to charity is not altered cy pres, because the original limitations are inexpedient.

3. A gift in trust to charity will not be altered because the duties imposed upon the beneficiary are burdensome.

4. A gift in trust to charity will not be applied cy pres, unless valid at the death of the testator.

Coming to cases in which the doctrine is applied, they are examined by subdivisions under the first general head, where a charitable gift is made to trustees and the limitations of the trust are vague or imperfect; and secondly, where a charitable gift is made to trustees and the terms of the trust, which were originally clear and exact, cannot be executed strictly, because of a change in the trustees or a change in certain necessary circumstances of the trust, or a change in the law.

The mechanical execution of the book is in the usual handsome style of the publishers.

CRIMINAL LAW.

A TREATISE ON THE LAW OF SELF DEFENSE, TRIAL BY JURY IN CRIMINAL CASES, AND NEW TRIALS IN CRIMINAL CASES, BY ELLIOTT ANTHONY, JUDGE OF THE SUPERIOR COURT OF COOK COUNTY, CHICAGO, ILLINOIS. —The J. M. W. Jones Stationery and Printing Company, Chicago, 1887.

This work is by our well known townsman, Judge Anthony of the Superior Court of this City. Having known the author for many years, even from the time when we "rode the Circuit" together, in the western part of this State—it was, we will not say how many years ago—suffice it to say it was in our younger days,—it now gives us pleasure to bear witness to this, another monument of his industry as well as legal learning.

The author has not, like some more ambitious writers, undertaken to make the law—he has satisfied himself to record it as he found it. This he has done with indefatigable research and unceasing industry.

The book consists of many short chapters, each treating upon some branch of the subjects announced in the title page, or upon some adjudicated case involving the principles under discussion, and in which the law has been declared. Perhaps we cannot give a better idea of the work than to copy the titles of the Chapters of each division, as follows:

PART I. SELF DEFENS.

Introduction; The Selfridge Case; The Campbell Case; Was the Killing in necessary Self Defense? The Killing must not be upon Slight Grounds; Killing in Order to prevent a Trespass upon Real Estate is not allowed; The Circumstances; Retreat—When must a Party retreat? Reasonable and well Grounded Belief; The "Reasonable Person;" The Defendant must not bring on "The Difficulty;" All the Law of Self Defense; Murder; Justifiable Homicide; Killing a Trespasser; Chance Medley; When is a Man licensed to kill? Manslaughter; Evidence; How is Conviction to be shown? Difference between Burden of Proof and Presumption of Innocence;

What is a Presumption? Burden of Proof; How Evidence should be considered? The Facts should be presented precisely as they occurred; Threats; Intention; Provocation; Overt Act; Good Character of the Defendant; Defendant's Testimony; Dying Declarations; Circumstantial Evidence; Res Gestæ; Reasonable Doubt; Summary. APPENDIX—Instructions. Extracts from the Revised Statutes of Illinois in regard to Murder, Justifiable Homicide, Manslaughter and Self Defense.

PART II. TRIAL BY JURY.

History and Development of Trial by Jury; Right of Trial by Jury in the United States; In the State of Illinois; Venire; Counsel for the Prisoner; Different Kinds of Juries; Jurors must be Freeholders by the Common Law; Jury of the Vicinage; Challenges to the Array—What is meant by "The Array;" How Challenges to the Array are to be tried and determined, Triers; When is a Challenge to the Array or Polls to be made? Who may Challenge the Array? What is a Jury List? Opinion of Judge Shepard as to what constitutes a Legal Jury List and Challenge to the Array; Talesmen; Calling the Jury; Peremptory Challenge; Challenge for "Principal Cause or Favor;" Challenge to the Polls; Special Venire; Common Law Powers of a Court; Of Arraignment and its Incidents; Standing Mute; Jurors as Recognitors; Impaneling a Jury; Venue; Change of Venue—This should be made Discretionary; What is a Jury Trial? Trial; Cross Examination of Witnesses; Fair Play; Juries Judges of the Law and the Facts; What relation does a Judge sustain to a Jury in a Criminal Case? The State Trials; Voir Dire—Origin of the Practice of examining Jurors on their Voir Dire; Qualifications and Examinations of Jurors in the State of Illinois; Rumors; Prejudice against Crime or against a Particular Business does not render a Person Incompetent to serve on a Jury; Unbridled License; Newspaper Opinions; Has a Trial Court any Discretion in passing upon the Competency of Persons to serve on a Jury? Swearing the Jury; A Prisoner not entitled to a Copy of the Indictment in England; Cross examining a Juror as to his Qualifications; Prejudice against Crime; Jurors to "stand by;" Discharge of Jury; Discharging Jurors after they have been accepted and sworn; Verdict of the Jury; Retiring the Jury; Sealed Verdict; Isolation of Juries in Criminal Cases; Sentence and Judgment; Right to Bail after Verdict; Judge Shepard's Opinion; Waiver by a Prisoner of his Rights; The Court ought not to Communicate with the Jury after they retire; Separation of the Jury; Miscellaneous Points in Relation to Jurors; Summary.

PART III. NEW TRIALS IN CRIMINAL CASES.

New Trial; Crown Cases Reserved; Appeal Cases; New Trials; The Rule for granting New Trials in Illinois; Error in Instructions; Instructions should be viewed as a Series; Technicalities; Infallibility in a Trial Court not required; If the Verdict is against the Weight of Evidence a Court will not necessarily reverse the Case; Novum Organon; Substantial Justice; Common Sense; Criminal Court of Cook County; Final Judgment; Affidavits setting forth Grounds for New Trials; Bill of Exceptions; its Origin; Form and Time of tendering a Bill of Exceptions; Office of a Bill of Exceptions; Can a Bill of Exceptions in a Criminal Case be amended at a Term subsequent to that at which it was made and signed? Writ of Error; The Record and what it shall contain; Time and Manner of inflicting the Death Penalty; Recapitulation. Supplement —Insanity—Detectives, &c.

The law under each of these titles is stated generally in the language of the decisions, and is evidenced and illustrated by a large number of cases under some of the titles, and by one or more under each. The number of cases cited in the book is immense, and it is manifest that very many of them have undergone a careful examination. It is a complete and exhaustive work on some of the most important branches of criminal law, and its value to the bench as well as to the bar can scarcely be underestimated.

C. B. W.

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Oliv. Ellsworth

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THE CHICAGO LAW TIMES.

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OLIVER ELLSWORTH.

"If they who are appointed to defend the castle
Shall betray it, wo betide those within."—(Webster on the Supreme Court.)

Born at Windsor, Connecticut, April 29, 1745, Oliver Ellsworth came upon the sphere of manhood in the very heat of the troubles leading to the Revolutionary war, and, from the first, was an ardent supporter of the cause of the colonies.

His ancestor, Josias Ellsworth, was among the early settlers in the colony of Windsor, arriving there from England in 1646. Mr. Ellsworth at the age of seventeen, entered Yale College, where he remained two years, and then removed to Princeton College, where he graduated in 1766 at the age of twenty-one; and in 1771 he was admitted to the bar.

At that period the average of intelligence in New England was very high. The peculiar condition of the country demanded constant activity of mind and body, and a general reverence for principle, morality, and religion was exacted. And he who would rise above his fellows to the rank of leadership, had to be a giant indeed. Possessed of great natural mental vigor, capable and fond of intense application, devoted to his profession, prudent and regular in conduct, fortunate in being one of a family who then for a century and a quarter had continuously lived, prospered, and been respected in the same colony and town of his nativity, and further aided by marriage into a wealthy and highly honorable family of the same State,

it is not to be wondered at that as the troubles of his country increased, and men of character and standing were needed, he should have come to the front.

At an early stage he developed great ability as a *nisi prius* lawyer, and his success was such as soon to leave him unrivalled as an advocate at the bar of Connecticut. Although deficient in imagination he possessed extraordinary capacity in arraying facts and drawing logical conclusions from them.

Thoroughness in the mastery of a single subject at a time was his habit; and by firmly rooting in his memory whatever he thus acquired, he grew learned as he became eminent.

When he was appointed to the Continental Congress, in 1787, he is said to have enjoyed the most lucrative practice in Connecticut, and this was only about eight years after his admission to the bar.

Noah Webster, the lexicographer, was a student in Mr. Ellsworth's office, and has stated that his docket frequently numbered from a thousand to fifteen hundred cases.

Even after his active political life began, and up to 1784, when he became Judge of the Superior Court of Connecticut, he seems to have kept up a more or less active practice at the bar; and by judicious investments his fortune rose to a degree of wealth at that time rare in Connecticut.

In an admirable sketch of him, published some seven years after his death, in the Analectic Magazine, it is said: "Like most men of powerful intellect, but of little general cultivation, he seized at once upon the strongest point and left it for no other. He did not enter the field of controversy in the glittering panoply of science, wielding at pleasure all her arms, but, like Hercules with his club, armed with a single weapon, but that one powerful and massy." And this was his characteristic always, at the bar, on the bench, in Convention and in Senate.

It was never better illustrated than in the stormy debate which occurred in the Convention for framing the Federal Constitution, on his motion, that "the rule of suffrage in the second branch of the National Legislature (Senate) be the same as that established in the Articles of Confederation"—that is, that

each State have an equal vote. Upon this question the most serious struggle had in the Convention occurred.

The outlines of this debate are preserved in the notes of Mr. Madison; and the vital principle, argued with wonderful ability by Mr. Ellsworth, that it was necessary to concede equality among the States, in the Senate, in order to secure the small States against the large, was maintained by him for two days almost single-handed in opposition to the greatest names in the Convention—Madison, Hamilton, Franklin, Randolph, Pinckney, Gouverneur Morris, Rufus King and Judge Wilson —who, each in turn, in their array of splendid intellectual strength, and representing as they did, the wealth and population of the large States, endeavored in vain to weaken his position and overthrow his arguments.

The Convention stood very nearly balanced on the question. Threats of dissolution were boldly made on both sides.

Ellsworth, and those with him, answered to all threats from the other side, their own, that they, having previously yielded the principle of representation proportioned to population, in the House, would go no further, and dissolution if it must come, would lie at the door of the delegates from the large States.

Neither side was willing to yield. The period for the dissolution of the Convention appeared to have come; and but for one of the delegates from Georgia, who, when the vote was taken on the following Monday, voted for Ellsworth's proposition, all would have been lost. He voted, as he declared, not from conviction but for fear the Convention would dissolve and no Union be established.

The body then stood evenly divided. A committee was thereupon created, to which the question was referred, and by its report, which was adopted by the Convention, the proposition of Mr. Ellsworth was conceded.

Thus became established, by way of admirable compromise, that division of representation in the National Legislature—partly of the people and partly of the States—which has stood the test of time, of peace, and of war, and for which the wit of man, has, as yet, suggested no improvement.

Mr. Van Santvoord in his "Lives," says: "It is not too much to say that to the resolute efforts and persevering energy of Oliver Ellsworth, more than to any other man in the Convention, is the country indebted for the final compromise of the Constitution which gave to each State an equality of representation in the Senate."

In the light of subsequent history it is interesting to note that South Carolina voted with the large States, and against Ellsworth's proposition; and apposite thereto, is what was, many years later, remarked by John C. Calhoun. He said: "It is owing—I speak it here in honor of New England and the Northern States—it is owing mainly to the States of Connecticut and New Jersey that we have a federal instead of a national government; that we have the best government instead of the most despotic and intolerable on the earth. Who were the men of those States to whom we are indebted for this admirable government? I will name them. They were Chief Justice Ellsworth, Roger Sherman, and Judge Patterson of New Jersey. The other States further south were blind; they did not see the future. But to the sagacity and coolness of those three men, aided by a few others, but not so prominent, we owe the present Constitution."

At an early period in Mr Ellsworth's professional life he was appointed States Attorney for the District of Hartford, an office of considerable emolument which he held for several years. And, as was often the case in those days with leading men, he frequently afterward held more than one public office at a time.

Space precludes mention of his services except in the sphere of what may be called his national employments. They were, however, always honorable and eminently useful.

Mr. Ellsworth's reputation as a lawyer had preceded him, and, when, in October 1778, he first took his seat in the Continental Congress he was immediately placed on two most important committees—the Marine Committee, having charge of all naval affairs and operations, and the Committee of Appeals.

The latter heard and determined appeals from the several

admiralty courts of the different States in cases of capture on the high seas, and in their determination, the very highest order of legal ability was demanded.

One writer has said that if he were to trace the history of the Supreme Court of the United States, he should begin with that of this committee, for it was there that the supremacy of the general government and its tribunals over that of the States and their tribunals was first asserted.

It is a part of tradition, that from his experience as a member of this Committee, Ellsworth was enabled at a later day when in the United States Senate, to frame the Judiciary Act of 1789, with such consummate wisdom.

Not only as a member of various committees, but in a general way in devising measures for the public credit, and to sustain the army in the field, during the most perilous years of the Revolution, Mr. Ellsworth was greatly distinguished. A writer on the subject says: "It is worthy of remark that no committee of special importance was ordered by Congress while Madison, Hamilton, and Ellsworth were members of that body, without the appointment of some one or more of them to serve upon it."

Those three gentlemen together composed the Select Committee which prepared the celebrated address to the States, accompanying the resolution of Congress asking aid from the several States in funding the national debt; a resolution adopted while the articles of peace were being settled at Paris in 1783.

As with most men not endowed with special genius, like his friend Alexander Hamilton, the growth of governmental ideas in Ellsworth's mind kept even pace with, and was largely guided by his experience, and this part of his career afforded admirable preparation for his subsequent most distinguished conduct in the Federal Convention, and United States Senate.

He was a member of the Continental Congress 1777–1783, and, also, 1780–1784, a member of the Supreme Court of Errors of Connecticut. In 1784, Mr. Ellsworth was appointed Judge of the Superior Court of the State, and continued in that office until elected to the first Senate of the United States in 1789. While sitting as Judge of the Superior Court, the Assembly

of the State appointed him at the head of a delegation to represent Connecticut in the Convention to frame a plan for a Federal Government assembled at Philadelphia in May 1787. The opponents of a Federal Government were both numerous and able in Connecticut, and the skill and ability of its friends were taxed to the utmost to avoid risk of defeat in the adoption by the State, of any plan which might be proposed.

Mr. Ellsworth favored a strong government, but, unlike the ultra federalists, believed it could be best attained through the instrumentality of the several States. He had no sympathy with the notion that the people needed propping up by shoulder straps and braces in order to keep them erect.

A preservation of the identity, equality, and sovereignty of the States, and the engrafting upon any new system, of the simple democratic principles pervading the institutions of his native State, was all that in his opinion, was needed, and all that would be accepted by a people who had struggled so long for domestic independence. With such ideas, opposed, somewhat, to the majority of his party, and of the Convention, he entered that body.

The Convention was presided over by Washington and was composed of the most distinguished characters the country could boast.

Its deliberations were often disturbed by the bitterest of discussions, among which was the one already barely noticed, wherein Ellsworth triumphed over Hamilton, Madison, and all the other ultra Federalists.

Finally, after the adoption of a series of resolutions declaring the vital principles upon which the Government should depend, a Select Committee of five, with John Rutledge as chairman, and Ellsworth one of its members, was appointed to draft the formal instrument; and the triumphant document which has forever set at rest man's capacity for self-government was the result.

Respecting the work of Mr. Ellsworth on this committee, Mr. Wharton, in his felicitous notes to American "State Trials," says of him:

"The publication of Mr. Madison's journal shows that to him,

perhaps more strictly than to any other of that distinguished assembly, is to be attributed the majestic simplicity as well as the technical exactness which marks the instrument it framed."

Although Ellsworth's name does not appear appended to the written Constitution as amended and finally approved by the Convention, it was not because of hostility to it as a plan of government, as was the case with several of the members of that body, but was owing to his absence on other business during the closing hours of its session. The main principles which he had come into the Convention to maintain had been conceded and established; the details of the instrument itself had been constructed in the main, and mere formalities were to him of small moment.

No sooner was the Constitution promulgated than Mr. Ellsworth's voice sounded forth in its support, and he was appointed a delegate to the Connecticut Convention assembled in January 1788, to consider its adoption.

Having been chairman of the State delegation in the Convention to frame the instrument, he opened the debates in the State convention in its support.

Two speeches were made by him—one in explanation of the scheme, and another on the power of Congress to lay taxes —both masterly efforts.

The latter was especially powerful, and in the course of his argument he declared the duty and the power of the Supreme Court, for which the Constitution made provision, to check Congress by declaring its acts void, and unconstitutional whenever the occasion should arise.

He said: "If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. This Constitution defines the extent of the powers of the general government. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judiciary power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the States go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void; and

upright, independent judges will declare it to be so."

To Chief-Justice Marshall is generally credited the first announcement of the doctrine just quoted, and while it was by him, in the case of Marbury vs. Madison, first given authoritative judicial exposition, the first public declaration ever made of it was by Mr. Ellsworth.

The importance and effect of this statement by so distinguished a man as Mr. Ellsworth, was to silence the most dangerous argument employed against federal unity—that of fear of encroachments by the National Legislature upon the reserved rights of the States.

Mr. Webster in a great speech in the Senate in February, 1833, in reply to Mr. Calhoun, quoted liberally from this speech of Mr. Ellsworth; prefacing what he said as follows:

"I cannot do better than to leave this part of the subject by reading the remarks upon it in the Convention of Connecticut by Mr. Ellsworth, a gentleman, Sir, who has left behind him on the records of the government of his country, proofs of the clearest intelligence and of the deepest sagacity, as well as of the utmost purity and integrity of character."

The reporter of the debates of the Connecticut Convention says: "Every objection was raised against it (the Federal Constitution,) which the ingenuity and invention of its opposers could devise. * * * Suffice it to say, that all the objections vanished before the learning and eloquence of a Johnson, the genuine good sense and discernment of a Sherman, and the Demosthenian energy of an Ellsworth."

Ellsworth and Johnson were chosen the first Senators from Connecticut—Ellsworth drawing the short term—and took their seats at the first meeting of Congress in New York, on March 4, 1789.

At the expiration of his term, Mr. Ellsworth was re-elected, and he remained continuously in the Senate until appointed Chief-Justice of the United States.

His services during those seven years were of the most valuable character.

The frame work of the Constitution had to be filled out, elaborated and finished by legislation. Invention was at an

end. The work of dry details had to be begun. Everything incident to putting the new plan of government in motion had to be done. For such work Mr. Ellsworth was eminently adapted. He possessed those rare faculties of construction which were required in the work of rearing a worthy temple upon the broad foundations of the Constitution; and his practical mind and laborious energy gave to him the foremost place. Governmental destructionists were, then, as now, to be found on every hand; the constructionist, then, as now, was seldom found.

In commenting upon his career in the Senate Mr. Van Santvoord says of Ellsworth:

"Among all his associates during the whole period of his service in the Senate, it would be difficult to point out one who may justly claim the possession of equal capacity in everything pertaining to the utilities of legislation."

His influence in the Senate was greater, perhaps, than that of any other man in his time. He was called the "Cerberus of the Treasury," and, once, in referring to his attack upon, and defeat of a bill calling for some extraordinary appropriation, Aaron Burr said of him: "If he should chance to spell the name of the Deity with two Ds it would take the Senate three weeks to expunge the superfluous letter."

John Adams described him as the "firmest pillar of his (Washington's) whole administration in the Senate;" and adds, that if, during his own administration, Ellsworth, King, and Strong, had been in the Senate, "the world would never have heard of the disgraceful cabals and unconstitutional proceedings of that body."

The next day after the Senate attained a quorum, Mr. Ellsworth was made chairman of a committee to bring in a bill for the organization of the Judiciary.

The Constitution provided simply that there should be one Supreme Court, and such inferior courts as Congress might establish. The edifice was to be constructed. In a short time Mr. Ellsworth reported the bill for that purpose known as the Judiciary Act of 1789. It was substantially his own creation. The original bill in his handwriting is still preserved at Wash-

ington, and the Act was passed with but trifling alterations. Of itself, it is a sufficient monument to the memory of any man, and one, that, so far, has stood as unimpaired as the Constitution itself.

From the earliest to the latest, his views were that the safety of the Union lay in a permanent and powerful department of judiciary. When, later, in France, he was asked by Talleyrand, how to establish republican principles and free institutions for the French, he replied that, first, there must be created a judicial tribunal independent of all other departments, with attendant compensation sufficient to tempt the ablest and to protect the best men the nation had for such service. The people would soon find that in such a court all would have equal rights and privileges, and republicanism would be safe.

The Senate of those days maintained an aristocratic reserve, sitting altogether with closed doors. Its debates were secret, and its proceedings disclosed only by its journal. It is, therefore, impossible to define with accuracy the part taken by any of its members on many important matters.

Contemporaneous remark, however, gives to Mr. Ellsworth almost an undue share in its work.

The mission of Chief-Justice Jay to England was the immediate result of an interview had by Mr. Ellsworth with President Washington. Mr. Madison's famous non-intercourse resolutions were pending in the Senate, and apprehensive of their effect upon our relations with England, Ellsworth, with his co-Senators, King, Strong, and Cabot, held a consultation, and Mr. Ellsworth was deputed to wait upon the President and urge a special mission of Mr. Jay, or Mr. Hamilton, to England, for the purpose of negotiating a settlement of our difficulties with that nation.

The President accepted the suggestion and appointed Mr. Jay. The publication of the treaty negotiated by Mr. Jay aroused a rancorous opposition and a violent excitement, which, fortunately, has had but few parallels in our history. While Mr. Jay was abroad he resigned the Chief-Justice-ship, and pending the excitement over the treaty, the President appointed Mr. John Rutledge, of South Carolina, his successor.

Rutledge had always been a federalist, and was a most distinguished and honored man in the councils of his party. It was therefore with consternation that his old-time associates learned that he was opposing the treaty, an essentially federalist measure, with all the ardor and ability of his impetuous nature and great talents. Resentment was but natural, and timidity was not known to be a federalist characteristic.

Even Washington experienced a reflection upon himself for making the appointment. It was regarded as an attempt on his part to court faction at the sacrifice of consistency. The Senate refused to confirm the appointment, and Mr. Rutledge, after a brief career as Chief-Justice, had to retire.

Mr. Ellsworth had been intimately associated with the inception of Jay's mission, and was a firm believer in the beneficence of the treaty, and he undoubtedly voted against Mr. Rutledge, notwithstanding their frequent association in high public employment.

His sentiments upon the subject, so far as they have been preserved, seem to have partaken of a mixture of resentment and regret. In one letter he says: "That E. R. (Edward Rutledge) should act not at all, is less surprising than that J. R. (John Rutledge) should act like the devil." And in another he says: "With regard to Mr. Rutledge it certainly was difficult, after he had come, not to commission him."

Although the rejection of Mr. Rutledge resulted in Mr. Ellsworth's promotion to the vacant post, it nowhere appears that the question of succession in any way entered into the contest just ended.

Judge Cushing was soon afterward appointed and confirmed, but declined, and thereupon Washington tendered the great office to Mr. Ellsworth, who "with some hesitation," consented to accept it. He resigned his seat in the Senate and was immediately confirmed, and four days after the date of his commission, March 4, 1796, took his seat upon the bench.

The elder Wolcott wrote to ex-Governor Trumbull, "Mr. Ellsworth's appointment will be satisfactory to all who are willing to be pleased. If our country shall be saved from anarchy and confusion, it must be by men of his character."

He was then in the 51st year of his age. From this time on, until his acceptance of the special French mission in the fall of 1799, he was constantly engaged in his judicial duties, and sustained himself with high ability and great satisfaction.

The cases before the Supreme Court during the five years in which Ellsworth was Chief-Justice, were neither numerous nor especially interesting. His published opinions are to be found in 3d and 4th Dallas, and are scarcely more in length than formal judgments of the court.

As a writer he was extraordinarily concise; and it is said that his spoken style was at all times superior to his written. Some extracts from an unreported decision rendered by him in a case of great importance heard at circuit in North Carolina, will afford an excellent illustration, not generally accessible, of his broad and forcible manner in dealing with questions not controlled by precedent.

During the war, North Carolina had enacted a law confiscating all debts due from her citizens to British subjects, and providing for their payment into the State treasury and for a discharge to the debtor. After the war a suit was begun in the United States Circuit Court, by a subject of Great Britain against a citizen of North Carolina, upon a bond executed before the war for a prior indebtedness. The defendant admitted, by his plea, the execution of the bond and that the plaintiff had not been paid, but pleaded in bar that since the execution of the bond a war had existed in which the plaintiff was an enemy; and that during the war the debt had been confiscated by the State and the money paid into the State treasury and that the debt no longer existed. The plaintiff replied that by the treaty terminating the war it was stipulated that creditors on either side should meet "with no lawful impediment to a recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted."

Besides discussing a variety of interesting collateral questions, the Chief-Justice says.

"It is not strictly true that in this case there was no debt at the date of the treaty. A debt is created by contract, and exists till the contract is performed. Legislative interference

to exonerate a debtor from the performance of his contract, whether upon, or without conditions, or to take from the creditor the protection of law, does not in strictness destroy the debt, though it might the local remedy for it.

Debts contracted to an alien are not extinguished by the intervention of a war with his nation. His remedy is suspended while the war lasts; because it would be dangerous to admit him into the country, or to correspond with agents in it, and, also, because a transfer of treasure from the country to his nation would diminish the ability of the former, and increase that of the latter, to prosecute the war. But with the termination of hostilities, these reasons, and the suspension of the remedy ceases.

It was manifestly the design of the stipulation that where debts had been 'heretofore contracted' there should be no bar to their recovery from the operation of laws passed subsequent to the contracts. As to the opinion that a treaty does not annul a statute so far as there is an interference, it is unsound. A statute is a declaration of the public will, and of high authority; but it is controllable by the public will subsequently declared; hence the maxim that, when two statutes are opposed to each other the latter abrogates the former. Nor is it material, as to the effect of the public will, what organ it is declared by, provided it be an organ constitutionally authorized to make the declaration.

A treaty, when it is in fact made, is, with regard to each nation that is a party to it, a national act; an expression of the national will, as much so as a statute can be; and does, therefore, of necessity annul any prior statute, so far as there is an interference. The supposition that the public can have two wills, at the same time, repugnant to each other—one expressed by a statute, and another by a treaty—is absurd.

Admitting the right claimed by the defendant (the vested right to his discharge acquired by payment to the State before the treaty was made) to be as substantial as the right of property can be, yet he may be deprived of it if the treaty so requires. It is justifiable and frequent in the adjustment of national difficulties, to concede for the safety of the State, rights of

individuals; and they are afterward indemnified, or not, according to circumstances."

Among those famous criminal trials in our early history, in the conduct of which the talented Judge Chase was so prominent, was that of Isaac Williams who was tried before the Chief-Justice. His conduct of the case is a notable proof of his fearlessness and judicial independence. Williams was an American by birth, but he accepted a privateersman's commission from the French and committed numerous depredations upon the English. He was indicted, tried, and convicted, for a violation of our treaty obligations with Great Britain.

He did not deny the acts charged but based his defense on the fact that he had abjured his allegiance to the United States and had become a duly naturalized citizen of France, and had a right to engage in the service of his adopted country.

In a very able decision, the Chief-Justice excluded as irrelevant, all testimony offered by Williams in support of his defense; holding that no citizen of the United States can throw off his allegiance without the consent of Congress.

For this decision, esteemed to be so contrary to the traditions and policy of a republican government, the Chief-Justice was bitterly assailed—the essays of Mr. Nicholas, of Virginia, under the name of "Aristogiton," published in the Virginia Examiner and Aurora, being especially noteworthy for ability and rancor.

However unrepublican such doctrine may be esteemed, the great principle laid down by Ellsworth may be considered as the settled law of this country so far as judicial interpretation extends; and its justification may be found, as argued by him, in the distinction between the obligations imposed by the mutual consent of the governed and those governing, and such as are imposed by force.

But our government in its other departments has never recognized the doctrine of perpetual allegiance as binding in our relations to our naturalized citizens, and probably never will. The despatches of our foreign secretaries, and notably those of Mr. Buchanan in the case of Bergen and Ryan, clearly establish that fact.

Although acting in a period of, and on questions involving much party rancor, Ellsworth's judicial character remained, as had that of his private life, and public career in other sphrees, untarnished even by suspicion.

Mr. Flanders, a biographer of them both, says of him:

"In learning he was not inferior to his successor, Chief-Justice Marshall; in labor he was, at least, his equal."

In the notes to "State Trials," already referred to, it is said.

"As a judge he should be spoken of with peculiar reverence, for the whole of our federal system was made by him. * * * By Mr. Ellsworth, the whole edifice, organization, jurisdiction, and process, was built as it now stands."

Such of his charges to grand juries, while holding circuit, as have been preserved, are models in brevity and perspicuity. Of his charges to petit juries President Dwight, of Yale College, in his "Travels in New England," says:

"Perhaps no judge ever more delighted or astonished an intelligent assembly by extricating a cause perplexed in law, fact, and testimony, from all its entanglements, and exhibiting it perfectly to the comprehension of plain common sense."

His manners on the bench were highly dignified, although, as everywhere, most gracefully courteous. By the bar he was beloved. Their rights were as much respected by him as were those of the bench.

Once while holding circuit with Judge Chase, at Philadelphia, Mr. Ingersoll, being of counsel, was interrupted two or three times in the course of his argument, by Judge Chase telling him that certain points being argued were well settled law, and at length, indignant and mortified, Mr. Ingersoll sat down.

The Chief-Justice, thereupon, took out his snuff box, and tapping it gently, as was his custom, said to the counsel:

"The Court has expressed no opinion, Sir, upon these points, and when it does you will hear it from the proper organ of the Court. You will proceed, Sir, and," turning a severe look upon Judge Chase, "I pledge you my word you shall not be interrupted again."

In the meanwhile Mr. Adams had been elected President.

The "Jacobins" were stirring matters, and, worse than all, war with France was imminent.

Washington had accepted the command of the army again, and Adams had been compelled, to his intense disgust, to appoint Hamilton, whom he hated and feared, second in command. "Alexander Hamilton at the head of the army and then President of the United States," was a probability unbearable to Adams' nature.

He resolved upon a special mission to negotiate a peace, and in order to impart to it the highest character, he invited Ellsworth, who by virtue of his office, was a co-ordinate in dignity with the President, to the head of it.

There has been considerable discussion as to whether Ellsworth favored the mission at first, or not. It is certain from a letter of his to Mr. Adams that he favored a suspension of it for a time. Mr. Adams, however, claims that he was in full accord with him concerning the mission, and in a letter says: "On my way I called upon Chief-Justice Ellsworth, at his seat in Windsor. He was perfectly candid," and was ready to go at an hour's warning, or wait, as should be determined. Associated with Mr. Ellsworth, in the mission, were Governor Davie of North Carolina, and Mr. William Vans Murray, then minister resident at the Hague.

Ellsworth, Davie, and their suite, sailed from Newport on November 3d, in the frigate United States, arriving at Lisbon on the 27th. There for the first time they learned of the overthrow of the Directory, and the installment of Napoleon, as First Consul. Their letters of credence were to the old rulers; how would they be received by the new?

A courier was despatched to Paris and he brought back a letter from Talleyrand, saying that they were "expected with impatience and would be received with warmth," and that the form of their letters would be no obstacle to negotiation. Proceeding overland they reached Paris on March 2d, and there found Mr. Murray awaiting them.

After six months labor a treaty was concluded. While this work was being done in Paris, Napoleon had crossed the Alps, captured Milan, defeated the Austrians at Marengo, returned

to Paris, and by the secret treaty of St. Ildefonso, on Oct. 1st, had obtained from Spain the retrocession of Louisiana, which she had held from France since the peace of 1763.

Of this treaty, Mr. George Bancroft says:

"The international result which forms the glory of the administration of our foreign affairs while confided to Mr. Adams, was the restoration of friendly relations between the United States and France," and he adds, in corroboration of what earlier writers have said: "The labor on the American side was mainly done by Oliver Ellsworth, who, more than any other, assisted to restore those relations, and prepare the way for the cession of Louisiana to his country."

The great international principle—for the violation of which, more than anything else, our people had been provoked to the verge of declared war—that the flag protects the cargo, was fully conceded by the treaty. One can imagine the concentrated energy of a man like Ellsworth, in the assertion and defense of a principle like that.

The negotiations concluded, a superb *fete*, in honor of the American ambassadors, was arranged by Joseph Bonaparte, at his chateau at Marfontaine, about eighteen miles from Paris, where the signatures should be formally affixed.

Oliver Ellsworth Jr., who accompanied his father abroad, wrote a detailed description of the occasion. About one hundred most distinguished guests were present, and spent the day in the beautiful grounds. Napoleon arrived at four o'clock in the afternoon, amidst salutes from artillery and peals of music from bands. The night was spent in banqueting, speaking, theatrical entertainments, and other festivities, all partaking of a patriotic character, glorifying the two republics.

Two years from the following April, France ceded Louisiana to the United States.

Seasickness, from which Mr. Ellsworth suffered greatly during his voyage, aggravated his gout, and he determined to remain abroad for a time. His son, who returned with Governor Davie, brought home his resignation of the office of Chief-Justice, and on January 31, 1801, John Marshall, then Secretary of State, was appointed his successor.

Apprehension existed lest the treaty with France should arouse unpleasant relations with England, and Mr. Ellsworth's visit to that country was watched with interest, but he was, in fact, received with a degree of attention by all parties most unusual. Rufus King, then our minister at that Court, says in a letter to the Secretary of State:

"Whatever may have been the temper or inclination of this Government before the convention with France was published, the distinguished manner in which Mr. Ellsworth has been received by the Court has a tendency to show that at present it has no animosity or unusual prejudice against us."

He was invited to a seat on the King's Bench, with Lord Kenyon, then Lord Chief-Justice, and received marked attention on all hands by both the bench and bar of England.

By the election of Jefferson the Federalists lost control of the Government for the first time since its establishment, and Mr. Ellsworth came home determined to retire and spend the rest of his life in the enjoyment of his family, wealth, and fame.

He had however, been at home but a short time before he was again elected a member of the Governor's Council, and *ex officio* member of the Supreme Court of Errors, which station he held during the rest of his life. His seat in the Council made him, besides, an *ex officio* member of the Board of Fellows of Yale College, and to the concerns of that institution he gave much attention.

In May, 1807, the judiciary system of Connecticut was remodeled, and, it is said, that to give it the greatest dignity, Mr. Ellsworth was appointed Chief-Justice of the State; but a renewed attack of his disease compelled him to decline the office, and he died Nov. 26, of that year, at the age of 62 years, at his home in Windsor, where his remains lie buried.

In personal appearance Mr. Ellsworth possessed great advantages. President Dwight says:

"Mr. Ellsworth was formed to be a great man. His person was tall, dignified and commanding, and his manner, though wholly destitute of haughtiness and arrogance, was such as irresistibly to excite in others, whenever he was present, the sense of inferiority."

"In every assembly, public or private, in which he appeared, after he had fairly entered public life, there was probably no man, when Washington was not present, who would be more readily acknowledged to hold the first place." In moral character he was, perhaps, more exalted, than either in physical, or purely intellectual, stature. In social life he was most engaging, and in the domestic circle he was gentle, kind and considerate.

It is interesting to note here, for the first time, perhaps, in print, that his grandmother, Sarah Grant, wife of Jonathan Ellsworth, was the granddaughter of Matthew Grant who came to this country in the ship Mary and John in 1630, the first American ancestor of General U. S. Grant. Some of the same ancestral blood, therefore, served to produce both of these great men.

Mr. Ellsworth was married Dec. 10, 1775, to Abigail Wolcott, one of a family that for two hundred years was greatly distinguished in Connecticut.

The ancestor, Henry Wolcott, was one of the congregation of Mr. Warham which settled Dorchester Mass., from England, in 1630, and shortly afterward removed to Windsor, Connecticut—he being one of the five who paid the expenses of the expedition. His son, also named Henry, was one of the patentees under the colonial charter of Charles II; and his grandson, Roger Wolcott, the grandfather of Mrs. Ellsworth, was a man much noted for military services in the French and Indian wars, and was distinguished in civil life by being Judge of the Superior Court for eighteen years, during ten of which he was Chief-Justice, and Governor from 1750 to 1754.

Oliver Wolcott Sen., a son of Roger, and the father of Mrs. Ellsworth, was one of the signers of the Declaration of Independence, a member of the Continental Congress from 1776 until the close of the war, and a Governor of the State at the time of his death in 1797.

Her brother, Oliver Wolcott Jun., succeeded Alexander Hamilton as Secretary of the Treasury during Washington's second administration, retained the office during most of John Adams' term, and was Governor of Connecticut for ten su

cessive years; 1817–1827.

Of this marriage, the Chief-Justice had nine children. The two youngest were twins, born Nov. 10, 1791, one of whom, William Wolcott Ellsworth, was Governor of Connecticut from 1838 to 1842, and a Judge of the Supreme Court of that State from 1847 to 1861, when his term expired by constitutional limitation on account of age. The premature death of several of his children, and especially that of his son Oliver who accompanied him to France, were great afflictions.

Mr. Ellsworth was most tenderly attached to his children. In a letter to his wife he says in reference to his eldest daughter:

"You must teach her what is useful, the world will teach her enough of what is not."

In another letter alluding to his first son, named Oliver, also, who died in 1778, while a baby about one and a half years old, he says:

"He who bore your countenance and my name—the world has never been the same to me since his death."

Such are the outlines, merely, of the life of a man, scarcely known to the present generation, but who was, in fact, among the chiefest of those who conceived, gave birth to, and nourished, the mighty infant known as the American Republic.

No closing can be more apt than the finely expressed summary of Mr. Ellsworth, given by Mr. Flanders in his "Lives of the Chief-Justices:"

"For strength of reason, for sagacity, wisdom, and sound good sense in the conduct of affairs; for moderation of temper, and general ability, it may be doubted if New England has yet produced his superior."

Henry M. Shepard.

THE HIGHER LAW.

"It appears in our books," says my Lord Coke, "that in many cases the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void; for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void." —(Co. 8. 118 a.)

Blackstone says:

"The law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately from this original." –(Commentaries, Introduction, Sec. 2.)

Lord Chief Justice Hobart has said that even an Act of Parliament made against natural justice, as, to make a man a judge in his own cause, is void in itself; for *jura naturæ sunt immutabilia*, and they are *leges legum*.—(Hob. 87.)

When statutes are made "there are some things which are excepted and foreprized out of the provisions thereof, by the law of reason, though not expressly mentioned."—(Dwarris on Statutes, Potter's Ed'n, p. 123.)

There are some elementary writers both in England and the United States who lay down a different doctrine, and a passage in Blackstone is sometimes cited wherein the learned com-

mentator apparently differs from himself, and asserts the absolute binding force of an Act of Parliament, in cases where the language is too plain to be misunderstood.

Notwithstanding all this, the doctrine of a higher law may be considered as well established in this country.

A few of the many decisions of the State courts in support of it, will be referred to.

In Massachusetts, the authority of the legislature to suspend the operation of a general law in favor of an individual, was denied upon the ground that it was "manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our Constitution and laws that any one citizen should enjoy privileges and advantages which are denied to all others under like circumstances; or that one should be subjected to losses, damages, suits or actions, from which all others under like circumstances, are exempted."—(Holden v. James, 11 Mass. 405.)

In Lewis et al. v. Webb, 3 Greenl. 336, C. J. Mellen said: "On principle it can never be within the bounds of legitimate legislation, to enact a special law or pass a resolve dispensing with the general law in a particular case, and granting a privilege and indulgence to one man by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just or reasonable in its consequences. It is our boast that we live under a government of laws and not of men. But this can hardly be deemed a blessing unless those laws have for their immovable basis the great principle of Constitutional equality."

These remarks of Chief-Justice Mellen are quoted with approval by Chapman, C. J., in Simonds v. Simonds, 103 Mass. 573.

Green, Justice, in State Bank v. Cooper et al. 2 Yerg. 602, says: "Certain limits to the exercise of legislative power have been recognized from the earliest times. It is a principle of the English common law, as old as the law itself, that a

statute, even of the omnipotent Parliament of Great Britain, is not to have a retrospective effect. Why was it so considered by the English courts? They had no written constitution, with express restrictions upon the legislative power. It was so considered because there are eternal principles of justice which no government has a right to disregard. It does not follow, therefore, because there may be no restriction in the Constitution, prohibiting a particular act of the legislature, that such act is therefore constitutional. Some acts, though not expressly forbidden, may be against the plain and obvious dictates of reason."

Bell, Justice, in Officer v. Young, 5 Yerg. 322:

"The obligation of the judge, that he will do equal law and right to all persons; that he will delay no one of common right, by reason of any command from any person or persons in authority, or for other cause whatever; but that he will faithfully, truly and justly do equal and impartial justice to individuals and the public; are the great and mighty barriers to all encroachment upon that administration of justice, which puts citizen upon equal footing with citizen."

"Enlightened courts" said Justice Lockwood, in Betts v. Bond, Breese, 289, "have ever disputed the power of the legislature to pass retrospective laws which take away vested rights." Citing Dash v. Van Kleck, 7 Johns. Rep. 477.

Justice Mulkey in Dodge v. Cole, 97 Ill. 356: "It is the right of the legislature to pass general laws for the government and regulation of all persons and property within the State, and it is made the exclusive judge of their fitness and propriety, so long as they do not encroach upon the powers entrusted to the other departments of the government, or interfere with vested rights."

Durkee v. The City of Janesville, 28 Wis. 464, is a leading case on this subject, because of the fullness with which the principles involved are discussed, as well as on account of the high reputation of the jurist who gave the decision.

Dixon, Chief-Justice, giving the Opinion of the Court, said:

"This is an appeal from the taxation of costs in this Court,

by the clerk. The costs were taxed in favor of the plaintiff, Durkee, who was the prevailing party, and against the City, in pursuance of Sec. 36, ch. 264, Laws of 1860. The language of the Section is general, and declares that the party prevailing in this Court, may have costs taxed in his favor. * * It is contended, however, that the operation of this law has been suspended, or that it has been repealed so far as relates to certain actions (of which the present was one), where the City of Janesville is a party defendant. By an amendment of the Charter of the City, (referring to the statute), it is declared that no costs shall be recovered against the City in any action where the same is commenced to set aside any tax assessments or tax deed, or to prevent the collection of taxes or assessments in said City. * * * *

"The question is, whether the legislature can so discriminate between suitors or parties to the same litigation in a court of justice, as that one of them shall have such special and important pecuniary advantage over the other. I, for one, think not; and in declaring my opinion, I care very little whether it is placed on those fundamental principles of law and justice which in our form of government it has been held no legislative body can override, even though not prohibited by the written Constitution, or upon the provisions of the Constitution itself. * *

"It is undoubtedly a safe and sound general proposition, that for the court to declare an act of the legislature void for unconstitutionality, some specific clause or provision of the Constitution must be pointed out which has been violated. But this rule is not without its exceptions. * *

"The grant of legislative powers, though without prohibition or restraint that the legislature shall not discriminate and do gross and palpable injustice between man and man by the passage of unequal and partial laws, does not carry with it the power to pass such laws Such a power, from its very nature, and of necessity, is 'foreprized' and taken out of the grant without any express exception or limitation; and the act, though in form of law, yet, not being within the scope of the authority conferred, is not legislation at all, and so is void." All the

justices concurred in the decision.

The grant of legislative power referred to by Chief-Justice Dixon, is not to be sought for in the State Constitution, which is not a grant of but prohibition upon legislative power. The grant is an implied one, and comes from the people themselves, who in electing the members of the legislature, and thus vesting them with legislative power, are not presumed to authorize any interference with their sacred rights of person and property.

In C. W. Z. R. R. Co. v. Commissioners of Clinton Co., 1 Ohio State Rep. 84, Ranney, J., said:

"The authority of the General Assembly is much too broadly stated, when it is claimed that all their acts must be regarded as valid which are not expressly prohibited by the Constitution. A moment's attention to principles which must be regarded as fundamental, in all the American systems of government, will demonstrate the unsoundness of such a conclusion. * * *

"As the General Assembly, like the other departments of government, exercises only delegated authority, it cannot be doubted that any act passed by it, not falling fairly within the scope of legislative power, is as clearly void as though expressly prohibited. And we agree entirely with the Supreme Court of Pennsylvania in Parker v. Commonwealth, 6 Barr, 511, that it is this species of insidious infraction that is more to be feared and guarded against than direct attacks upon any particular principle proclaimed as a part of the primordial law. * * *

"From these considerations it follows that it is always legitimate to insist that any legislative enactment drawn in question, is void, either because it does not fall within the general grant of power to that body, or because it is expressly prohibited by some provision of the Constitution."

See also Ham. v. McClaws, 1 Bay, (S. C.) 93; Cooke, (Tenn.) 214; 4 Dev. (N. C.), L. 1; 5 Hayw. 106; 1 Yeates' 260; 5 Cow. 346; 7 Johns. 477; 5 Paige, Ch. 159.

The doctrine of the higher law, has been distinctly recognized and repeatedly declared by the Supreme Court of the United States.

In Calder v. Bull, 3 Dallas, 387, 388, the Court says;

"I cannot subscribe to the omnipotence of a State legislature, or that it is absolute and without control, although its authority should not be expressly restrained by the Constitution or fundamental law of the State. * * The nature and ends of the legislative power will limit the exercise of it.

* * * * * *

"There are certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as, to authorize manifest injustice by positive law, or to take away that security for personal liberty or private property, for the protection whereof the government was established. An act of the legislature (I cannot call it a law), contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. * *

"A few instances will suffice to show what I mean. A law that punishes a citizen for an innocent action; or, in other words, for an act which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law which makes a man a judge in his own cause, or a law which takes property from A and gives it to B. It is against all reason and justice for a people to entrust a legislature with such powers, and therefore they cannot be presumed to have done it. The genius, the nature and the spirit of our State governments, amount to a prohibition of such acts of legislation, and the general principles of law and reason forbid them.

"I do not hesitate to declare," said Mr. Justice Johnson, in Fletcher v. Peck, 6 Cranch, 143, "that a State does not possess the power of revoking its grants. But I do it on a general principle, on the reason and nature of things; a principle which will impose laws even on the Deity."

The doctrine is stated by Justice Story, in Wilkinson v.

Leland, 2 Peters, 657, in the following language:

"That government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least, no court of justice in the country would be warranted in assuming that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil liberty—lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people."

Justice Miller, in Loan Association v. Topeka, 20 Wallace, 663, says there are limitations on legislative power and on government power generally, "which grow out of the essential nature of all free governments. Implied reservations of individual rights without which the social compact could not exist." He furnishes illustrations similar to those given in the cases cited, and refers to Whiting v. Fond du Lac, 25 Wis. 188.

The conclusion to be drawn from this examination of the elementary works, the decisions of the highest State tribunals, and of the Supreme Federal Court, is, that an act of a State legislature in violation of the fundamental principles of right and justice, is void, whether unconstitutional or not. This is the language of the syllabus in the report of Durkee v. Janesville, 28th Wisconsin; language which is fully justified by the foregoing authorities.

The higher law rests upon the inherent rights of the people. Constitutions and statutes lend their aid to its requirements, but it is not from them that this law derives, in the first instance, its force and validity.

When, in the Constitutional Convention of 1870, it was asked if all the fundamental principles of government were sup-

posed to be contained in a constitution, some of the members of the Convention cried out "Yes, Yes." These were probably the same men who had been engaged in an attempt to eliminate the higher law, so far as possible, from the Constitution of the State.

It may be neither uninteresting nor uninstructive to see how far they succeeded in this attempt.

The Constitution of 1848, as well as that of 1818, contained the following provision in the Bill of Rights:—(Art. 13, Sec. 8, of Const. of 1848).

"No freeman shall be imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

This was based upon a similar provision in the Magna Charta of England. The first part of it was designed to guaranty the political and the latter part the natural rights of the people. Justice Bronson, in Taylor v. Porter, 1 Hill's Rep. 145, held that under a similar section in the Bill of Rights of New York, an elector could not be disfranchised except after trial by jury to determine whether by commission of a crime he had forfeited the right of franchise. The reasonableness of this construction will be apparent when it is noticed that the words "freehold," "liberties" and "privileges" are in such close contiguity, and when it is remembered that the elective franchise was formerly co-extensive with the freehold, and inseparable from it.

Though this had been a part of the fundamental law of the State for over half a century, the Convention of 1870 struck out all but the last clause, leaving the Section to read as follows:

"No person shall be deprived of life, liberty or property, without due process of law."

This bold innovation though made apparently by the Con-

vention, and though the Convention is of course responsible for it, was really the work of a few men in committee. It is well known how such business is transacted. In this case the responsibility rests principally on the Committee on the Bill of Rights, tnough it falls secondarily upon the Committee on the Right of Suffrage, and on the Committee on Revision, all of whom were more in a position to be called to account than the great body of the Convention, who, it is more than probable, were not fully aware of the change that was being made. It is difficult to believe that such men as O. H. Browning and W. F. Coolbaugh would ever knowingly have consented to it. The theory that it was done in a corner of a committee room, is strengthened by the fact that when the Section was read by the Secretary, there were calls for the question, while no such call was made upon the first reading of any other section. The conspirators feared that the attention of the Convention would be called to the change that was being made. In response to the call, the question was stated and put, and the Section adopted without debate and without division.—(Const. Convention Debates and Proceedings, vol. 2, p. 1559.) By the great body of the Convention either the change was not noticed, or if it was it was supposed the balance of the provision would be incorporated into another section.

Other changes were made in the same direction, and in a somewhat similar manner.

The Bill of Rights in the Constitution of 1848 contained this preamble: "That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare:" The preamble was stricken out in committee. The phrase "free government" is not to be found in the new Bill of Rights.

Again: Sec. 2 of the Bill of Rights of 1848, read as follows: "That all power is inherent in the people, and all free govern-

ments are founded on their authority, and instituted for their peace, safety and happiness." This was stricken out in committee. It will be seen that the phrase "free government" occurs again here in the omitted section.

Again: The Bill of Rights of 1848 provided that no man's property should be taken or applied to public use without the consent of his representatives in the General Assembly, or without just compensation being made to him. The words "without the consent of his representatives in the General Assembly," were stricken out in committee. This also was passed without discussion, and probably while most of the members were unaware of the change.

Again: The 21st Section of the Declaration of Rights of 1848 read as follows:

"That the people have a right to assemble together in a peaceable manner to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances."

The 17th Section of the Bill of Rights of 1870, which was substituted for the foregoing, reads thus:

"The people have a right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances."

Thus the guaranty of the right of the people to instruct their representatives was stricken from the fundamental law.

Other changes might be mentioned, but these are sufficient to show that there were men in that Convention who were engaged in eliminating as far as they could the higher law from the Constitution.

But thanks to the authorities and decisions herein cited, that law is in force all the same, though not specifically, in all of its requirements, embodied in the Constitution, and notwithstanding the omission of the guaranty of political rights founded upon Magna Charta, the judiciary of this State would

undoubtedly in a proper case hold, that a man in the enjoyment of the elective franchise cannot be deprived of it except for crime. They would undoubtedly hold to be void an act of the legislature taking from a citizen for any other cause his vested right of suffrage as not within the scope of the authority which the people may be supposed to have delegated, and as contrary to right and justice and to the principles of our republican form of government. And so of any other right of a fundamental character,—whether it should relate to person or property or to the privileges and immunities of citizenship. And thus the plotters against the higher law would take nothing by their action.

In basing the higher law upon the principles of right and justice, it may be said, as Justice Iredell said in his separate opinion in Calder v. Bull, above cited, that "the ideas of natural justice are regulated by no fixed standard."—(3 Cranch 398.)

That may be conceded. While the *sense* of justice, prompting one to do what he thinks is just and right, is the same in every individual, the *idea* of justice, or of what is just and right is different among different nations and at different times. Nevertheless, the ideas of right and justice prevailing among any people in any age of the world, constitute the higher law of that people.

This law may advance, and is advancing toward a higher standard. The fact still remains, however, that the highest ideas of right and justice at the time prevailing, constitute the only higher law that is actually enforced and which can be considered settled as the law of the land. It is in the highest degree practical. No judge need to fear subjecting himself to the charge of temerity in adhering to it. In fact the upright judge has constantly before him his own ideas of right and justice. By these he is directed at every step in adminis-

tering the law. In all the preliminary proceedings, as well as at the trial—in the settling of pleadings and the disposing of motions—in determining the order of business—in the admission of evidence and the protection of witnesses—in the treatment of counsel and jurors, and in the settlement of bills of exceptions. And finally, in deciding questions of law, he will aim to rise above technicalities, unless clearly bound by statute or decision. When called upon to declare the law, he will declare it as it is, and at the same time, so far as possible, as it should be.

He will conscientiously enforce every constitutional provision, and will hesitate to set up his own views of right as against an act of the legislature which does not clearly conflict with any provision of the Constitution; but in a plain case he will not shrink from doing so. His highest conception of right and justice is the pole-star by which he is ever guided in his judicial career. Acting by its light, and thus standing guard over the rights and liberties of the people, he honors himself and the high office which he fills, and at the same time performs the highest possible service to his country.

Charles B. Waite.

EARLY JUDICIAL HISTORY
OF CHICAGO AND COOK COUNTY,

In Connection with the Career of Hon. Mark Skinner.

"In the birth of societies," says Montesquieu, "it is the chiefs of the republics who form the institution, and in the sequel it is the institution which forms the chiefs of the republics."

And he adds: "One of the causes of the prosperity of Rome was the fact that its kings were all great men. We find nowhere else in history an uninterrupted series of such statesmen and such commanders." Illinois was fortunate from the first in having as her founders a race of great men.

What city ever had a more enterprising, more sagacious, a more enlightened and far-seeing class of men than those that shaped the destiny of Chicago as she rose from the marsh and the wilderness? What brighter galaxy of names ever adorned the annals of any community than that of Caton, Collins, Morris, Hamilton, Judd, Peck, Butterfield, E. S. Williams, Julius Wadsworth, Hugh T. Dickey, William H. Brown, Henry Brown, Lisle Smith, Giles Spring, John M. Wilson, J. Y. Scammon, Edwin C. Larned, Grant Goodrich, Thomas Drummond, Henry W. Blodgett, James Grant, George Manierre, George B. Meeker, William B. Ogden, Mahlon D. Ogden, Isaac N. Arnold, Thomas Hoyne, John Wentworth, Mark Skinner, and in later years E. B. Washburne? Here are names quite as illustrious as those whose voices rang out under the arches of Westminster Hall. Here are men whose achievements will compare with that of any land. They lend lustre

to our local history, and would be an ornament to any age or any country. We are proud of their achievements and the part that they played in shaping the destinies of this great city.

If monuments are to be erected to commemorate the achievements and virtues of our fellow men let not our civic heroes be forgotten. Washburne and Hoyne were types of stalwart manhood that were fit to command the Ironsides of Cromwell, and Ogden, Butterfield, Arnold, and Skinner to be Counselors of State and direct its most complicated affairs. We beg your indulgence for a moment while we take a retrospect.

Within the memory of men still living the State of Illinois has advanced from an unorganized territory to a great and powerful commonwealth.

A century has not yet elapsed since the vast and unoccupied territory which now comprises five States was nominally under the British dominion, and it is not a century since we constituted the frontier county of Virginia, and afterward formed a part of Indiana, and not until 1818 that we set up for ourselves.

In 1778, Chicago was in Virginia, and up to 1809, was in Indiana. February 3, 1809, Indiana Territory was by an act of Congress divided into two separate governments. President Madison appointed John Boyle, an associate Justice of the Court of Appeals of Kentucky, Governor of the Territory, but he declined, and Ninian Edwards, Chief Justice of the same Court, was appointed in his stead. Nathaniel Pope was appointed Secretary, Alexander Stuart. Obadiah Jones and Jesse B. Thomas, Judges; Benjamin H. Boyle, Attorney General.

Under the ordinance of 1787 and the act of Congress, February 3, 1809, the Governor and Judges constituted the law-making power of the Territory, and as such they met for the first time at Kaskaskia, June 13, 1809, and their first act was to resolve that the laws of Indiana Territory, in force prior to March 1, 1809, which applied to the government of the Territory, should remain in full force and effect. The duration of the session was seven days.

The earliest settlements were in the southern portion of the State and the settlers chiefly from Virginia and Kentucky. This arose from the fact that the exploits of Col. George Rogers Clark, who, with a small force of Virginians and men of Kentucky, had penetrated far beyond the furthermost settlements, and taken Kaskaskia and Cahokia in the name of Virginia, had so stimulated immigration to the Illinois country that the early settlers were almost exclusively from those States; consequently when the State was organized the great preponderance of the population was in the southern part of the State.

Indeed, when the first Constitutional convention was called to frame a Constitution not a man was in that convention who lived north of Madison County. Virginia claimed the whole country by right of conquest through Col. Clark, and erected the whole territory of Illinois into a county called Illinois County, and it so remained until ceded by Virginia to the General Government and Indiana and Illinois had been carved out of the same and organized into territorial governments.

The relations of Illinois to Virginia are of great interest, in view of the fact that Illinois was for many years the frontier county of that great State, and in further view of the fact that the Supreme Court of this State has in at least four cases decided that the common law exists here to-day as it did in Virginia in 1784, when it ceded its claims to the General Government, and before the passage of the ordinance of 1787.

And here let us mention a remarkable fact, that no statue or ornament of George Rogers Clark, adorns the capital of either Illinois, Virginia, or Kentucky, neither was the law establishing the Illinois country into the "County of Illinois" ever printed in any collection of laws or statutes in this State, and so far as we have been able to discover, it can, we believe, only be found in Henning's Statutes of Virginia. It was reprinted by us a short time since in a local legal publication, and is of itself a rare relic and curiosity. The only thing done by the people of this State to perpetuate the name of Clark, is to call a county after him, and to name the street, on which the building in which we are now assembled fronts, Clark Street.

We expect some day, however, to find that some enterpris-

ing member of the City Council will rise in his place and declare, as it has been done in several instances, that it is without significance, and move to wipe out the name of this old pi neer, and change it to Sixth Avenue.

In 1821, Chicago was in Pike County, in 1823 in Fulton County, and in 1825 in Peoria County.

The act creating Cook County was passed and approved by the General Assembly of Illinois, January 15, 1831, and by the same act Chicago was made the county seat, and a ferry established at the seat of justice. It was named after Daniel P. Cook, a son-in-law of Governor Ninian Edwards, who was one of the first United States Senators from this State. He was a member of Congress from 1820 to 1827, and during that year.

In March, 1831, Cook County was organized. It embraced within its boundaries all of the territory which now constitutes the counties of Lake, McHenry, Du Page and Will, and the only voting place in the county at the first election, was Chicago.

The County of Illinois included part of Wisconsin and Michigan and all of the States of Ohio, Indiana and Illinois, and the process of a Virginia court at that time was as potent at Milwaukee as at Williamsburg—with this qualification that there was no Milwaukee, but there was a Williamsburg.

After the Constitution had been adopted, the General Assembly convened, the State Government was organized, and then an adjournment took place until the winter of 1818–19.

At this adjourned session a code of statute law was passed, mostly borrowed from the statutes of Kentucky and Virginia.

"But," as Governor Ford says, "this code as a whole did not stand long. For many sessions afterward; in fact until the new revision of 1827, all the standard laws were regularly changed and altered every two years, to suit the taste and whim of every new legislature. For a long time the rage for amending and altering was so great, that it was said to be a good thing that the holy scriptures did not have to come before the Legislature, for that body would be certain to alter and amend them, so that no one could tell what was or was not the law of

the State. A session of the Legislature was like a great fire in the boundless prairies of the State; it consumed everything. And again it was like the genial breath of spring, making all things new."

The capital was at that time at Kaskaskia, the ancient seat of empire for more than one hundred and fifty years of the French and English inhabitants, who had followed the Indian trail along the route from the northern lakes to the Spanish settlements in the South, under the guidance of La Salle and Iberville, and the priests Alvarez, Rasles, Gravier, Pinet, Marest, and others, and who had in time taken up their abode at Prairie du Rocher, Bone du Pont, Cahokia, Fort Chartres, Peoria, and Chicago.

Chicago became an incorporated town by vote of the people, August 5, 1833, and the first election of Town Trustees was August 10, 1833. It had at that time a population not much exceeding one hundred and fifty inhabitants. On the 4th of March, 1837, the Charter was passed, incorporating the City of Chicago. May 2, 1837, Chicago became a city.

By the Charter of the City of Chicago, passed March 4th, 1837, a Municipal Court was provided for, and was duly organized, but was abolished by an Act of the Legislature, February 15, 1839, and all actions then pending in it were transferred to the Circuit Court.

July, 1832, according to Captain Walker, who came here to engage in the Black Hawk war, there were but five dwelling houses here, three of which were made of logs.

By the Constitution of 1818, it was provided that the judicial power of the State should be vested in a Supreme Court, to be holden at the seat of government, to consist of a chief justice and three associates, but that the number might be increased by the General Assembly after the year 1824. It was further provided that the justices of the Supreme Court and the judges of the inferior courts should be appointed by joint ballot of both branches of the General Assembly, and commissioned by the Governor, should hold their offices during good behavior, "until the end of the first session of the General Assembly which shall be begun and held after the 1st day of January, in

the year of our Lord 1824, at which time their commissions shall expire;" until which time the said justices were to hold circuit courts in the several counties, in such manner and at such times, and have and exercise such jurisdiction as the General Assembly should by law prescribe. And ever after the aforesaid period the justices of the Supreme Court should be commissioned during good behavior, and the justices thereof should not hold circuit courts unless required by law.

According to this arrangement the State was divided into four judicial circuits, in which the Chief Justice and his three associates performed circuit duties until 1824. In December, 1824, an act was passed dividing the State into five judicial districts, and five circuit judges were ordered to be elected by the General Assembly, who were to perform circuit duty, thereby relieving the Supreme Court justices. But this was considered unnecessary and an extravagant waste of money, as the four Supreme Court judges were each receiving $800 per year and the circuit judges each $600 per year. This act was therefore repealed January 12, 1827, the State divided into four judicial circuits, to each of which one of the justices of the Supreme Court was assigned. January 8, 1829, a fifth circuit was added, which included the whole region north of the Illinois River, and for it a judge was chosen by the General Assembly, the justices of the Supreme Bench having been already assigned for duty in the four circuits south of that river.

In 1831 the Fifth Judicial Circuit was established, composed of the Counties of LaSalle, Putnam, Peoria, Fulton, Schuyler, Adams, Hancock, McDonough, Knox, Warren, Jo Daviess, Mercer, Rock Island, Henry and Cook. It will be noticed that this circuit contained fifteen counties, and embraced such distant points as Galena, Quincy, Peoria and Chicago. Richard M. Young was judge, and the first term of a circuit court ever held here was held either in May, 1833, or September of that year.

Under and by virtue of this arrangement the terms of the Circuit Court of this County were, prior to 1848, held by Richard M. Young, Thomas Ford, Sidney Breese, Stephen T.

Logan, John Dean Caton, John Pierson, of Danville, and Jesse B. Thomas, Jr., and perhaps Theophilus W. Smith. The sessions of the Court were held in the First Presbyterian Church, which stood in the same block with the Sherman House, fronting on Clark Street. There has, first and last, been considerable discussion among our local authorities as to the exact date when the first session of the Circuit Court was held in this county, some contending that it was held in September, 1831, others that it was not before May or September, 1833.

Judge Manierre stated at the memorial services of Col. Hamilton, in 1860, that the first term of the Circuit Court in Cook County was held in September, 1831. Mr. Bross, in his history of Chicago, holds to this also, and seems further to be of the opinion that a term was also held here in 1832, for he says that the records of the County Commissioners show that "the Sheriff shall secure one or more rooms for the Circuit Court, at the house of James Kinzie, provided it can be done at a cost of not more than ten dollars." In confirmation of the view that such court was held, the same work states that Judge Young, accompanied from Galena by two lawyers, Mills and Strode, brought tidings to Chicago of the disturbed state of the Indians, which culminated later in the Black Hawk War.

Charles Balance, in his "History of Peoria," says that Judge Young made his appearance in the Village of Peoria in May, 1833, and announced that he was on his way to Chicago to hold court. "On this occasion," he says, "I attended court at Chicago to seek practice as a lawyer and partly to see the country."

"The first term of the Circuit Court held in Cook County," says Thomas Hoyne, "was in September, 1833, by Hon. Richard M. Young. In 1834 he also held the term in May."

Judge Caton is of the opinion that the first term was held in May, 1834, or at least the first at which any law business was done. Except an appeal from some justice, which was No. 1 on the docket, he tried the first case ever tried in a court of record in this county, and this he is confident was at the May term, 1834.

Judge Young may have come here in 1831 to '33, but it

is quite possible and very probable, from all we can learn, that no regular court was held here at which any business was done until the spring of 1834.

The first lawyer that ever came here to reside was Charles Jouett, who came here as Indian Agent, in 1805. He was a native of Virginia, born in 1772, and the youngest of nine children. His father shared in Braddock's defeat, and two of his brothers fought in the war of Independence.

He studied law at Charlottesville, Virginia, and was appointed by Jefferson, Indian Agent at Detroit, in 1802. January 22, 1803, Mr. Jouett married Miss Eliza Dodemead, of Detroit, who died in 1805, leaving a daughter born in 1804.

April 2, 1805, he was appointed Commissioner to hold a treaty with the Wyandottes, Ottawas, and other Indians in North-western Ohio, and what is now South-eastern Michigan.

The treaty was signed at Fort Industry, on "The Miami of the Lake," now Maumee, July 4, 1805. The same year he was appointed as Indian Agent at Chicago, and on October 26, 1805, assumed charge, by direction of the Government, of the Sacs, Foxes, and Pottawatomies.

Early in 1809, he married Miss Susan Randolph Allen, of Clark County, Kentucky, but born near Williamsburg, Virginia, in 1786. By her he had one son born in Chicago in 1809, but he died in 1810. Three daughters were afterward born to him in Kentucky. In 1811 he removed to Mercer County, Kentucky, where he became a Judge in 1812. He was again appointed Indian Agent for Chicago by President Madison in 1815, and moved here with his family in that year. He is charged with $1,000 salary as such agent on the books of the Government for 1816.

The Indian Agencies in Illinois were turned over to the Territory in 1817, and he soon after severed his connection with the Department and returned to Kentucky, although we find his name appended to the Indian Treaty which was signed at St. Mary's, Ohio, September 17, 1818.

On the organization of the Territory of Arkansas in 1819, he was appointed Judge, but the climate proved unfavorable and unhealthy, and he resigned after a residence of a few months

and returned to Kentucky, and died in Trigg County on the 28th of May, 1834. His family were noted for their remarkable size, strength and manly beauty, and he appears to have been a man of great intelligence and integrity. He enjoyed the friendship of three Presidents, and the confidence of all who knew him.

The next lawyer that took up his abode here was Russell E. Heacock, who was born in Litchfield, Connecticut, in the year 1799. He lost his father when quite young, learned the carpenter's trade, which he followed for about thirty years, removed to St. Louis in 1806, studied law in a desultory manner under one Russell Easton, of St. Louis, and was admitted to the bar in 1816. He married Rebecca, second daughter of William Osborn, at Brownsville, that same year. He was licensed to practice in Illinois on the 24th of January, 1821.

He then went to Buffalo, where he resided three years. He removed from there in 1827, and arrived in Chicago July 4th, of that year. He at first took up his residence inside of the enclosure of old Fort Dearborn. During the next year he removed to a log cabin, which he purchased of one Peter Lampslett, situated about the center of section 32, township 39, range 14, "about three quarters of a mile southeast of the lock at Bridgeport, and about one mile south of Hardscrabble."

In 1830 he appears to have acted at one time as a judge, and at another time as a clerk of election, and in 1831 was selected as one of two commissioners to lay out a road from Shelbyville to Chicago. He was licensed to keep a tavern in his own residence at Hardscrabble, which was, we believe, near the present site of the rolling mills at Bridgeport, and was one of the seven justices appointed for Cook County, September 10, 1831. He became a purchaser of several school lots at the sale of the school section in 1833, one of which was lot 7, block 117, fronting south on Adams, directly opposite what was until a short time since known as the Rookery, which lot he designed for a residence. In the Spring of 1835 he built a house on what he supposed was this lot, only to find after he had finished it that it was on Monroe street instead of Adams, whither he proceeded to remove it on rollers. This house his son said he occupied off

and on until his death. The first suit in chancery that I ever had, occurred over this identical lot. Under date of August 5, 1835, we find him advertised as an attorney, and his name appears in the Chicago directories as late as 1848. He was one of the four delegates from Cook County to the Constitutional Convention of 1847, the others being Francis E. Sherman, Patrick Ballingall and E. F. Colby.

He invested largely in lands inside and outside of the town; and became greatly embarrassed in the years following 1837.

In 1843 he received a stroke of paralysis, which disabled him to a great extent. During the cholera epidemic of 1849, he fled with his family to a farm owned by him at the Summit, where he himself, his wife, and two sons were attacked, and died in quick succession between the 28th and 30th of June. He was a lawyer of fair abilities, could talk well, was independent, and of most decided convictions, as is evidenced by the fact that at the election for the incorporation of Chicago as a town, on August 10, 1833, out of thirteen votes cast, or, as some of the records show, twenty-eight votes, his vote was the only one cast against its incorporation. He left several children to survive him.

The next lawyer that came here was Richard J. Hamilton, who it is probable, was the author of the well known phrase that a public office is a public trust, for he had great experience as a public officer, having filled almost every local office extant in his day. Richard J. Hamilton was originally from Kentucky, but removed at an early day to Southern Illinois and was admitted to practice in Jackson County, March 31, 1827. He became Justice of the Peace for that county, then cashier of the Brownsville branch of the old State Bank. On the organization of Cook County he turned his eyes northward and was elected by the General Assembly as the first Probate Judge of Cook County, January 29, 1831. His friend, Judge Richard M. Young, appointed him Clerk of the Cook County Circuit Court, and Governor Reynolds commissioned him a Notary Public and Recorder. He was afterward appointed commissioner of school lands and trustee of the school, and Clerk of the County Commissioners' Court; in short he united

in his own person so many offices and performed so many duties that it was sometimes said that he was "Cook County incarnate." According to all accounts he arrived in Chicago in the very early days of March, 1831, and was present at the organization of the county on the eighth of that month.

He was a volunteer in the movement against the hostile Indians in the Fox River country and arrived at Indian Creek on the twenty-second of May, 1832, after the massacre of the settlers and found thirteen dead bodies that had been slain the day before. The flying refugees were escorted back to Chicago and were there taken care of. In 1835, he, in connection with others, employed John Watkins to teach a school near the old Indian Agency house where he resided; he afterward erected his own house on Michigan street between Cass and Rush streets where he lived for nineteen years. He was one of the voters for the incorporation of Chicago as a town, August 5, 1833, and for its first board of trustees soon after. He was a subscribing witness to the Indian treaty of September 26, 1833. In October of that year he, as commissioner of school lands, in compliance with a petition which had received ninety-five signatures, embracing most of the principal citizens of the town, authorized the sale of the school section. In 1835, Hamilton became a candidate before the people for the office of Recorder, and in answer to criticisms which had been made upon him for holding all of the offices in Cook County, published a card by way of explanation, in which, among other things, he said: "In 1831 I received the appointment of Clerk of the Circuit Court, Judge of Probate and Notary Public. I then moved to Chicago and found that no one wanted these offices. Soon after, the gentleman holding the position of Clerk of the County Commissioners' Court resigned and I was appointed. The office of School Commissoner was then held by Colonel T. J. V. Owen, who resigned. Up to September, 1834, the office has yielded me in all about $200; notary fees have not exceeded $50; probate fees have not amounted to more than $50. I have not realized from all offices, including that of Recorder, during four years more than $1,500. The whole number of instruments recorded, including a large number of

Receivers' Certificates for lands purchased at late sales, have been to July 1, 1835, about 1,300, at about seventy cents each."

He died of paralysis December 26, 1860, in the sixty-second year of his age, leaving a widow and five children.

It does not come within the scope of these remarks to go into further details pertaining to the life of this most remarkable man, but suffice it to say that he was one of the most public spirited of the early settlers and took part in all matters relating to the social, political, educational and religious interests of the people. At the time of his death a large meeting of the bar was held, which was participated in by all the old members of the profession. Judge Manierre reported a series of resolutions in which it was stated that "His death has removed one of our most distinguished citizens and pioneers, and the oldest member of the legal fraternity," and that they took pleasure "in bearing testimony to the high character of the deceased as a man and a citizen."

The first lawyers who came here to make a living by their profession were Giles Spring and John Dean Caton, who arrived about June 19, 1833. If they did not try the first lawsuit, they were engaged in the first prosecution for larceny that ever occurred in our midst, which was made memorable by the discovery of the stolen pelf in the toe of the criminal's stocking after he had denied all knowledge of its disappearance, and while in the very act of denying it. Judge Caton was so enraged that he jerked off the culprit's stocking, causing him thereby to disgorge and making profert of the plunder in open court. It is needless to say that Judge Caton not only earned his fee but got it, while Spring, who defended this hapless wight was left without anything.

Soon after, there came James H. Collins, Justin Butterfield, George Manierre, Alonzo Huntington, Ebenezer Peck, James Grant, E. W. Casey, A. N. Fullerton, Isaac N. Arnold, Henry Moore, Grant Goodrich, Buckner S. Morris, Wm. B. and Mahlon D. Ogden, Mark Skinner, Lisle Smith, N. B. Judd, Thos. Hoyne, William H. Brown, Henry Brown, and George B. Meeker. We have not given the names of these lawyers in

the exact order of time of the arrival, but we believe, as we have just stated, that Spring and Caton came here in 1833, Grant Goodrich, Buckner S. Morris, James H. Collins in 1834, William B. Ogden, George Manierre, Alonzo Huntington, Ebenezer Peck, John Young Scammon and Justin Butterfield in 1835, Isaac N. Arnold, John Wentworth, Mark Skinner and Henry Brown in 1836, Lisle Smith, Thomas Hoyne, N. B. Judd, George B. Meeker, and Mahlon D. Ogden in 1837, Edward G. Ryan in 1836, and Hugh T. Dickey in 1830. Calvin De Wolf came October 31, 1837, John Wentworth October 25, 1836.

William H. Brown came here in 1835. In 1834 the number of lawyers was eleven, and their names were. Russell E. Heacock, R. J. Hamilton, Giles Spring, John Dean Caton, E. W. Casey, A. N. Fullerton, James H. Collins, James Grant, Grant Goodrich, Henry Moore, and Buckner S. Morris. Five of these men reached the bench and all achieved fair distinction.

Caton, Goodrich, and Judge James Grant, now and for many years a resident of Davenport, Iowa, survive.

The first meeting of the Chicago bar was held some time in July, 1835, and was called to pay respect to the memory of Chief Justice Marshall, who died July 6, 1835. The members present were: A. N. Fullerton, E. W. Casey, Grant Goodrich, Buckner S. Morris, Henry Moore, and Royal Stewart.

From 1834 to 1840 many young men of education and family distinction came to Chicago to locate and engage in the practice of the law, but not all who thus came remained.

Among these were Henry Moore, Joseph N. Balestier, of Brattleboro, Vermont, George Anson, Oliver Beaumont, Fisher Ames Harding, of Rhode Island, and Fletcher Webster, the son of Daniel Webster. While here in 1837, Webster was at the head of the firm of Webster & Harding. These gentlemen removed to Detroit and both afterward returned East. Harding became distinguished as a journalist and Webster went as Minister to China. Edward G. Ryan, one of the most distinguished lawyers that ever practiced at the Chicago bar, came here in 1836. He afterward removed to Racine, then Milwaukee, and was, we believe, at the time of his death Chief Justice of the State of Wisconsin. He was first associated in

business with Henry Moore, then with Hugh T. Dickey. In 1840 he dissolved with Dickey, went into journalism and became editor of a paper called The Tribune, the first number of which appeared April 4, 1840.

We have within the last few days received from Hon. Hugh T. Dickey, formerly one of the most enterprising, talented and respected of our fellow citizens, a most interesting letter, giving a history of the organization of the old Cook County Court, together with his reminiscences of that early day, which has been of great service to us in preparing this memorial of the life and services of Judge Skinner.

THE EVOLUTION BY WHICH THE "COOK COUNTY COURT" BECAME "THE SUPERIOR COURT OF COOK COUNTY."

By an Act of the Fourteenth General Assembly, passed and approved February 21, 1845, a court, called the Cook County Court, was established in Cook County, with a seal and clerk, to be held by a judge chosen in the manner, and to hold office for the term of judges of courts of record in the State, with a jurisdiction concurrent with that of circuit courts, and exclusive jurisdiction in all appeal cases, and in all cases of misdemeanor which are prosecuted by indictment. It was to hold four terms a year, in the City of Chicago, commencing on the first Monday in May, August, November and February, to continue each term until all of the business before the Court was disposed of. The Judge had the power of appointing the Clerk.

At the same session of the General Assembly, and at the same time, a similar court was established in Jo Daviess County, called the County Court of Jo Daviess County, and by the 10th section thereof it was provided that the Judge of the County Court of Cook County should hold two terms of that Court at Galena, for which he should receive the munificent sum of two hundred and fifty dollars.

At that time the judges were elected by the Legislature, and Hugh T. Dickey, a young and rising lawyer of great shrewdness, urbanity and ability, was selected.

James H. Curtis, afterward Mayor of the City, was appointed Clerk, and the first term of the Cook County Court was held

May 5, 1845. The amount of business was, at that time, considerable, and that Court and the Circuit Court were kept busy.

In 1847, the Constitution of the State of Illinois was revised, and a new judicial system adopted for the State, in and by which the judiciary was made elective. A County Court was established in each county, with probate jurisdiction, to be held by one judge, who was to be elected by the qualified voters of the county, and hold for four years.

In the general overturning which took place by the inauguration of a new judicial system and the election of all the judges, provision was made in the supplement to the new constitution that "The Cook and Jo Daviess County Courts shall continue to exist, and the judge and other officers of the same remain in office until otherwise provided for."

By an Act of the General Assembly, approved November 5, 1849, entitled "An Act to establish the Tenth Judicial Circuit, and to fix the times of holding courts in the Fifth, Sixth, Seventh, Ninth and Eleventh Judicial Circuits, and for other purposes," it was provided in the eleventh Section as follows: "From and after the first Monday in January next, the Circuit Court in and for the County of Cook, shall be holden on the first Mondays of May and December in each year, and there shall be added to the name and title of the 'Cook County Court,' created by an Act of the Legislature, approved on the 21st of February, 1845, and referred to in the twenty-first Section of the Schedule of the Constitution, the words 'of Common Pleas,' so that the title and name of said Court shall henceforward be the "Cook County Court of Common Pleas,' and the regular terms of said last named court shall hereafter be held on the first Mondays of February and September in each year, instead of at the time heretofore designated by law; and the said Cook County Court of Common Pleas and the said Circuit Court of Cook County shall have equal and concurrent jurisdiction in all cases of misdemeanor arising under the criminal laws of this State, and in all cases of appeals from justices of the peace arising or instituted within said County of Cook, any law in anywise to the contrary notwithstanding;

and all appeals from justices of the peace within said County of Cook shall be taken and carried to whichever of said courts the term of which shall be held next after any such appeal shall have been applied for and taken."

By an act of the General Assembly, approved February 6, 1849, it was provided by the 1st section "That on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-nine, and every fourth year thereafter, an election shall be held in Cook County, at which election there shall be chosen one judge of the court created by an act entitled "An act to establish the Cook County Court," approved February 21, 1845; also a Clerk of said Court, and a Prosecuting Attorney, to perform the duties provided for in said act, who shall each hold their respective offices for the term of four years, and until their successors shall be elected and qualified."—(Ill. Laws of 1849, p. 69.)

The Jo Daviess County Court, which, by its organization, was to be held by the Judge of the County Court of Cook County, was repealed February 8, 1849, and all of its business transferred to the Circuit Court.

By an act passed February 6, 1849, provision was made for the election of a Judge of the County Court on the first Monday of April, 1849, and every fourth year thereafter.

When the Constitution of 1848 went into effect, and the election of the judges had been transferred from the General Assembly to the people, Judge Hugh T. Dickey, of the Cook County Court, was nominated for Judge of the Seventh Judicial Circuit by the Democrats, and was elected without opposition.

Judge Dickey, soon after his election, resigned the office of Judge of the County Court of Common Pleas, and Giles Spring was elected as his successor. He was commissioned April 14, 1849, and held the office until his premature death, which took place May 15, 1851.

Spring was in his way a character, and has left behind him a name that will be long remembered for his talents, his keen and cutting intellect, and his eccentricities. Judge Goodrich, who was at one time his partner, in a discourse before the His-

torical Society, a few years ago, among other things said:

"Spring was a phenomenon, a natural born lawyer. His education was quite limited, and he paid little respect to the rules of grammar; yet he could present a point of law to the court and argue the facts of the case to the jury with a clearness and force seldom equaled. He seemed sometimes to have an intuitive knowledge of the law and mastery of its profoundest and most subtle principles. His brain worked with the rapidity of lightning and with the force of an engine. In argument he possessed a keenness of analysis, a force of compact, crushing logic, which bore down all opposition."

Giles Spring was born in Massachusetts in 1805, whence he emigrated when a young man to the "Western Reserve" in Ohio. He studied law in Ashtabula, in the law office of Giddings & Wade, the historic Benjamin F. Wade and Joshua R. Giddings. He removed to Chicago in 1833, and sixteen years after, or in 1849, was elected Judge of the Cook County Court—Court of Common Pleas, but died May 15, 1851.

On the death of Spring, in May, 1851, Mr. Skinner was elected Judge of the Cook County Court of Common Pleas, and held the office for two years, but owing to declining health did not seek a re-election, and was succeeded by Judge John M. Wilson, one of the most remarkable jurists, in some respects, that ever held a judicial position in the courts of this county.

The first term of the Cook County Court of Common Pleas, held by Judge Skinner in the new Court House which was erected in the center of the public square, to take the place of the old one-story structure which so long stood on the corner, took place February 7, 1853. Most of the bar assembled at the court room on the occasion, and Judge Skinner, on taking his seat on the bench, congratulated the bar on the privilege of occupying the new rooms, where there was no fear of the walls or benches breaking down.

Judge Skinner, when he first went on the bench, found that a large amount of business had accumulated, and he held court for seven months continuously. During his term he tried several murder cases and many cases of great importance, among them one brought by James H. Collins, involving the

right of the Illinois Central Railroad Co. to occupy the lake front. The counsel for Collins were Isaac N. Arnold and John M. Wilson, while James F. Joy, of Detroit, appeared on behalf of the railroad; the final result was, the case was compromised and the questions involved postponed to future generations; it still being doubtful whether that corporation owns Lake Michigan or the public square fronting on the same, with the riparian rights bordering the same for an unknown distance.

On the expiration of Judge Skinner's term of office, John M. Wilson was elected, April 4, 1853, to succeed him; Walter Kimball, clerk, and Daniel McElroy as prosecuting attorney.

By an act of the General Assembly passed February 21, 1859, the name of the Cook County Court of Common Pleas was changed to that of the "Superior Court of Chicago," and was to consist of three judges, who should hold their offices for six years respectively; but it was provided that an election should take place on the first Tuesday of April, A. D. 1859, for two judges, and it was provided that the one who received the highest number of votes should hold his office for six years and the other for four years, and that on the first Tuesday of April, 1861, and every two years thereafter, there should be elected one judge of said Court who should hold his office for six years and until his successor was elected and qualified.—(Public Laws of 1859, p. 84.)

Under this arrangement Judge Van H. Higgins and Grant Goodrich were elected, April, 1859. Judge Goodrich held this office until 1863, when he was succeeded by Joseph E. Gary, who has been regularly elected by the people once in six years ever since that time.

Judge Higgins resigned in 1865.

John A. Jameson, on the resignation of Judge Higgins, was elected as his successor, and continued in that position until 1883, when he was succeeded by H. M. Shepard, who is now on the bench.

In 1867, Judge Wm. D. Porter was elected to succeed Judge J. M. Wilson, but died suddenly on October 27, 1873. Judge Sidney Smith was elected in 1879 and held the office until 1886 when he was succeeded by Judge Gwynne Garnett.

In 1870, on the revision of the Constitution of 1848, it was provided by article VI, section 23, that the "Superior Court of Chicago" shall be continued and called the "Superior Court of Cook County."

It was also provided that the General Assembly might increase the number of said judges by adding one for every 50,000 inhabitants in said County over and above a population of 400,000, and it was also provided that the number of the Circuit judges might be increased in the same way. Accordingly an act of the General Assembly was passed in 1875, providing for additional judges in the way and manner specified in the Constitution and increasing the number until the said Court should be composed of nine judges. It also made it the the duty of the Governor when he ascertained from the census of the State or the United States that the County of Cook was entitled to one or more additional judges "to issue a writ for the election of one judge for every 50,000 inhabitants above a population of 400,000."

It having been officially ascertained by the United States census of 1870 that the population of Cook County was sufficient for four additional judges, at the election in November, 1880, four additional judges were elected, so now that Court consists of seven judges and by the same process and in the same way the Circuit Court consists of eleven judges, five having been provided for by the Constitution of 1870 and six more having been added by an act of the General Assembly of 1885, in accordance with article VI, section 23, of that instrument.

At the election of November, 1880, Judges Hawes, Williamson, myself, and Judge Gardner, whose untimely death we this day deplore, were elected judges. Judge Williamson has since been transferred to the Circuit Bench, and he was succeeded by Judge Altgeld, and Judge Jamieson has succeeded Judge Gardner.

We have now given a brief history of events which relate more particularly to our judicial annals, and have shown by what process of evolution the old Cook County Court of 1845, with one Judge holding terms in Chicago and Galena, became the Superior Court of Cook County, 1870, and how it grew

from one judge to seven, and also how the Circuit Court expanded from one judge to eleven. Let us now briefly give a résumé of the life and character of him who was so closely connected with the earlier part of this judicial history.

Mark Skinner was born September 23, 1813, at Manchester, Bennington County, Vermont. His father was a lawyer and a prominent man in that State, as is evidenced by the fact that he held at various times the offices of Prosecuting Attorney, Probate Judge, member of the Legislature, Governor, Representative in Congress, and Chief Justice of the State.

The education of the son was carefully attended to, he having received a thorough academic and collegiate course, graduating at Middlebury in 1833. Leaving Vermont soon after his graduation, and after the death of his father, he spent a year at the New Haven Law School, then entered the office of Judge Ezek Cowen at Saratoga Springs, a celebrated lawyer, who is known the world over as the author of Cowen's Treatise, and finished his studies under the tutelage of Nicholas Hill, at Albany, who was a master of his profession and who perhaps never had his superior in this or any other country in analyzing a case, and making a brief, and presenting the law points which it involved to a court of last resort. About this time great and glowing accounts of the boundless west had reached his ears, and bidding adieu to his preceptors he started for Chicago and arrived here in July, 1836. He was soon after admitted to the bar and formed a partnership with George Anson Oliver Beaumont, a Connecticut man, a graduate, we believe, of the New Haven Law School, with whom he continued in business until 1844, when Beaumont's health failing him he was taken east and died of softening of the brain December 18, 1845. In the year 1847, Mr. Skinner formed a partnership with Thomas Hoyne, and on the death of Giles Spring, was elected Judge of the Cook County Court of Common Pleas, which office he held for two years and was succeeded by Judge John M. Wilson.

Mr. Skinner soon became known as a keen and cultivated lawyer, and his services were sought after by many who had

great confidence in his sagacity, his sound judgment, and his legal learning. In less than a year he was chosen one of the Board of School Inspectors, and from this time on his progress was great and his success assured.

He took a great interest in the cause of education, and in everything that related to the welfare of the people and their future happiness. I have taken some pains to look up his record, and it is remarkable. There was scarcely a projected enterprise in which the public had an interest but what received his indorsement or with which he was not identified.

No one of his biographers has undertaken to enumerate the various public matters, public and private corporations, projects and enterprises, social, political, and religious organizations, with which he became associated, but from the public records of this city, county and State, we find that he was one of the corporators of the Chicago Gas Light and Coke Company, and of the old Chicago Marine & Fire Insurance Company, and the State Insurance Company. He was a School Inspector and member of the School Board soon after he arrived here, and the public school-house, which stands on the corner of Aberdeen and Jackson streets, bears his name, and is known by everybody as the Skinner School.

In 1840, Mr. Skinner was City Attorney of the City, and Thomas Hoyne, City Clerk.

In 1842, a School Inspector. He was a delegate to a State school convention, held at Peoria, October 9, 1844.

In 1844, he was United States District Attorney.

October 8, 1846, he was a member of a State common school convention, held in Chicago.

January 30, 1841, he, Walter L. Newberry, Hugh T. Dickey, Peter Page, Walter S. Gurnee and other public-spirited citizens organized the "Young Men's Association," with Walter L. Newberry, President, Mr. Skinner, Vice-President, and Hugh T. Dickey, Corresponding Secretary. This Association provided a reading room and a library, and was the fore-runner of the great Chicago Public Library. It was doubtless from Mr. Newberry's connection with this Association, and the interest that he took in building up that library, that he was induced to

provide in his will for the munificent endowment of what is to be known as the Newberry Library.

Mr. Skinner was also connected with the Chicago Lyceum, long one of the foremost institutions in the city, and which conducted, year by year, a series of lectures by the best talent in the country. It was in its day a good institution.

In 1846, Mr. Skinner was elected a member of the General Assembly and was appointed chairman of the committee on finance. He introduced the bill for funding the State debt, which, through his efforts, passed and became a law. The services which Mr. Skinner rendered to the people of this State at that session of the General Assembly were invaluable and perhaps in a public view the most important of his life. The credit of Illinois was at that time at a low ebb, but by the Funding Bill the public debt was definitely ascertained, the creditors settled with and the credit of the State restored. It was the commencement in many respects of a new era.

Judge Skinner was chairman of the meeting called by the citizens of Chicago which met at the Court House on the 16th of November, 1846, to make the necessary arrangements for the great River and Harbor Convention which took place on the 5th of July, 1847, and was afterward selected as a delegate to that convention.

He took a great interest in the building and equipment of the old Galena & Chicago Union Railroad, which was the pride of all the old settlers, and he and J. Y. Scammon and William B. Ogden, as one of his friends recently informed me, almost begged from door to door to raise the money to pay for the first locomotive that was ever placed on that road or drew a train of cars over the prairies. He was for years one of its directors, and when the Chicago, Burlington & Quincy Railroad was projected, fostered and encouraged it and became one of its directors.

He was a member of the Second Presbyterian Church when Dr. Patterson was its pastor, and at the time of his death an honored member and officer in the Fourth Presbyterian Church.

He was a member of the United States Sanitary Commission

and President of the Chicago Sanitary Commission that did such signal service to our troops when operating in the Valley of the Mississippi. When the army under Grant were working their way slowly down the Mississippi Valley, sickness and disease broke out among them and they were threatened with the scurvy. Judge Skinner issued an appeal to the people of the North-west as President of the Chicago Sanitary Commission, for anti-scorbutics, and he so aroused the people that supplies went forward in vast quantities, and we have been told that his services in that regard were invaluable and were never forgotten by the soldiers or by General Grant and his officers.

He was one of the Trustees of the Illinois Charitable Eye and Ear Infirmary; he was long connected with the Chicago Relief and Aid Society; was for many years the President of the Home of the Friendless, and was the founder of the Chicago Reform School, which was established for the laudable purpose of educating homeless boys who were without parental control and growing up in idleness, mendicancy and vice, but which was unfortunately overthrown by a most ill-judged opinion of the Supreme Court of this State, found in the 55th Ill. Reports, p. 280, entitled The People, ex. rel. v. Turner, which has since been repudiated and declared unsound.

The Chicago Reform School was modeled after the act incorporating the House of Refuge of the city of New York at an early day, and was based upon the idea that it was the duty of the State to act as *parens patriæ* to the young and helpless who were incapable of taking care of themselves. This theory of the power and duty of the State had received the indorsement of the greatest jurists of Maryland, Pennsylvania and New York, as can be seen by adjudicated cases, and the New York act had been examined and passed in review by the ablest lawyers, judges, and statesmen living in that State. The validity of the act had been repeatedly attacked, but had always been sustained, and commencing with Governor Seward, in 1829, and reaching down to Governor John A. King, in 1857, it had been indorsed by Governor Seward, Governor Bouck, Silas Wright, Hamilton Fish, Horatio Seymour, and

Governor King, who had been asked to pardon out inmates of the House of Refuge on the ground that it was a prison, but they all decided that it was *not* a prison, but partook of the character of a school, and that the only persons who could discharge the inmates were the Board of Directors. This view of the matter was ignored by the Judges of the Supreme Court who occupied the bench at that time, and all the efforts of those who had undertaken to establish a reformatory for juvenile delinquents were thwarted.

By the irony of time this false theory of government and view of the powers and duties of the Government has at length been reversed, and the principles for which Judge Skinner and his colleagues contended have been re-established and re-enforced in several recent decisions of this State, notably the case of The Petition of Farrer, 103 Ill., 373; County of McLean v. Humphreys, 104 Ill., 379; Dodge Conservators v. Cole, 97 Ill., 354. See also ex parte Crouse, 4 Wharton, 11; Prescott v. the State, 19 Ohio St., 184; Roth v. House of Refuge, 31 Ind., 329; and Milwaukee Industrial School v. Supervisors of Milwaukee, 40 Wis., 328.

We need not dwell upon the distinguished talents and virtues of Judge Skinner; his blameless life, his elevated piety, his unwearied diligence, his ardent devotion to literature, and his active benevolence. His manners were gentle, courteous and entertaining. His habits of life were excellent and his tastes refined. His life was worthy of example and he belonged to the very best type of American citizens. He was a lover of his country in its broadest and best sense and long before the fire, began to make a collection of everything he could find relating to the history of America. This was all swept away in the great fire of 1871, but he began again on the restoration of his home, and at the time of his death had a large and valuable collection of books and pamphlets relating to our history that cannot be readily obtained either in this country or in Europe. His interest in the Chicago Historical Society is well known and the closing years of his life were largely devoted to these interests.

Judge Skinner had improved his mind by extensive travel

and observation both in this country and in Europe, and there was scarcely a subject that could be broached but what he could throw light upon it. It was our fortune to appear before him in some of the earliest cases that we ever had in a court of record and we believe it was the universal verdict of all who knew him that a fairer and a more impartial judge never presided in our courts than he.

Judge Skinner led a busy life, but it has closed at last. He died on the 16th of September, 1887, in the home of his youth at Manchester, Vermont, and sleeps with his fathers honored and respected by all who knew him.

He was fortunate in his birth and surroundings, and his early training fitted him for a useful and successful career. By nature he was gentle, painstaking, accurate and conscientious.

In his intercourse with his fellow men he was always actuated by a kindly, cheerful and benevolent spirit. He always manifested the liveliest sympathy in the hopes and joys of the young and brought out the ample stores of his ripe experience and sound wisdom to aid, encourage and warn them.

In reviewing his career, now closed, so full of useful service, public and private, we think that we are authorized in saying that he filled the full measure of an American citizen and secured the love and respect of all who came within the sphere of his influence.

He belonged to that class of men who, without playing a dazzling part on the stage of life, form the great conservative element of society, men who oppose the modest and unconscious resistance of sound principle and virtuous example to those elements of instability which are put in motion by the ambitious, the wreckless, the visionary and the corrupt.

He never forgot his interest in the law, and always took a great interest in everything that pertained to the profession.

The last time that I ever saw him, which was only a few weeks before his death, we talked at length of the good old times of forty years ago, and it was then proposed that there should be a gathering of the veterans of the bar, and an effort was made to rescue from oblivion so much of the personal

history of the pioneers as could be obtained ere they all passed away. He promised to write out his recollections and reminiscences, and requested me to write to Judge Hugh T. Dickey, of New York, and get him to do likewise, which I did; but, alas, before he entered upon that task he was gone hence, and his memory alone remains to us.

He has left us the legacy of a good name and the splendid example of an honest man. He was an ornament to our profession.

"We cannot," says a distinguished jurist, "be indifferent to the fate of our children or our country, and the happiness as well as the honor of both is indissolubly connected with the faithful administration of justice, nor ought we to disguise that the science which has been the choice of our youth and the ambition of our manhood has much in its milder studies to soothe and cheer us in the infirmities of old age, nor can it be deemed a human frailty if, when we take our last farewell of the law, we cast one longing, lingering look behind and bless those rising lights which are destined to adorn our judicial tribunals, however dimly they may be descried by our fading vision.

"May our successors in the profession look back upon our times, not without some kind regrets and some tender recollections. May they cherish our memories with that gentle reverence which belongs to those who have labored earnestly, though it may be humbly, for the advancement of the law. May they catch a holy enthusiasm from the review of our attainments, however limited they may be, which shall make them aspire after the loftiest possessions of human learning. And thus may they be enabled to advance our jurisprudence to that degree of perfection which shall make it a blessing and protection to our own country, and excite the just admiration of mankind."

Elliott Anthony.

MARRIAGE IN THE GERMAN MIDDLE AGES.

BY DR. E. FRIEDBERG, UNIVERSITY OF BERLIN.

In proceeding to deal with marriage, and the formal celebration of marriage, in the German Middle Ages, it is necessary to start with a brief indication of the position of the German women in the Middle Ages generally, as it is only on this basis that the German family and German marriage can be construed and understood.

As among all natural peoples, we find that among the Germans the women stood in a relation of dependence towards the men. The prevailing right of self-help necessarily established a kind of protection for the weaker sex in the stronger, and thus minors and all others incapable of bearing arms found their representatives in the effective fighting men. It was natural that this guardianship should be united and identified with the paternal power, that it should become hereditary in the paternal family down to the last male member, and that it should be ultimately consigned to the man into whose family the wife entered as a spouse.

In this jural framework we have the outline of the position of the German women of antiquity and of the Middle Ages; and from these jural relations we recognise that the position of the German women of those times, which has been so praised —and rightly praised—differed essentially from that which they occupy in our days. The women enjoyed the respect and the considerate treatment which were believed to be due to a being

that was spiritually strong, perhaps spiritually superior, but was corporeally in need of help. Indeed the German nationality thus presented a visible contrast to the Church, which expressed the Oriental depreciation of woman, and the Old Testament priestly stand-point, in the anxious dread with which they regarded all approach of women to the altar, and all contact of holy vessels and garments with female hands as a sort of desecration. Nevertheless the women did not concentrate the spiritual life of the nation, but the influence of their activity was limited to the little circle of the household, and the personality of the wife was entirely merged in that of the husband. This view showed itself in a very definite external way. It led even in Germany to the practice of the wife following her dead husband into the other world, on the ground that the body, as it were, loses its life and dies out when the head has fallen.

If we now inquire into the character of the paternal or marital power to which the women and wives were subjected, we find that on this point the Germans were little different from the peoples of classical antiquity. They were a wild people, inclined to violence, and addicted to amusement and drinking. War was regarded as an occupation alone worthy of the men; it was only upon the battlefield or in the camp that the man felt himself at his best. Whence then, it may be asked, could the refined forms come which some have desired to attribute to the reverence of our forefathers for women? Where do we find the tender feeling which it is common to transfer from the later conception of love to these times?

The father could expose his child immediately after birth, and he could sell it into slavery. And although the former right was more and more weakened by the influence of Christianity, and at last was branded as a crime, yet Geiler of Kaisersperg, the famous preacher of the Fifteenth Century, could still say: "The father under the distress of hunger may sell his son, and otherwise not; the mother may not sell her son whether she suffer hunger or not."—("Der vatter in hungersnot mag er den sun verkaufen und sunst nit; die mutter mag den sun nit verkaufen, sie leid hunger oder nicht.") The children,

according to the view of those times, formed a capital: and until they grew up, they were regarded as a dead property, which their lord and father was free to dispose of. It was a kind of business calculation which impelled him to rear the well-formed newborn son for use and benefit, and for the glory of the house; and it might occasion him to get rid of a newborn daughter as a joyless, troublesome burden, or it might move him in a time of greater civilization to give her a training, so that she might become of use, and work in the limited circle of the household.

When we compare the rights of the husband with those of the father, we find that they were completely equal and similar. The husband was also entitled to kill, sell, and chastise his wife. The first two rights of the husband alluded to are certainly found only in the old northern *Sagas*, and even then women of nobler nature preferred death to such trading in human beings; yet traces of it are still recognisable in England, where among the common people the immoral practice is found of a man bringing his wife to the market and selling or exchanging her. Although this practice is seldom used, and arises from ignorance of the law, yet it is believed that the bond of marriage is thus dissolved, and, however erroneous, it is unhappily unpunished. The husband's right of chastising the wife continued, however, to exist for many centuries in unweakened force, and there are still traces of it in the law-books of our own days.

I may be permitted to enter more closely upon this point, and, even under the danger of destroying an illusion in respect to the German antiquity and Middle Ages, I am nevertheless compelled by historical fidelity to draw attention to certain features which gave a peculiar character to marriage in those times. But on the other hand, I am able, in contrast to this, to refer to the moral excellence which lay from of old at the basis of the German relations of marriage.

> "The women should be reared," said Siegfried of the sword,
> "So that they never speak a single wanton word."

Thus it is sung in the *Niebelungenlied*; and as a proof that the precepts of the noble giant hero were not mere theory, we

have the lamentation of Chriemhilde:

"And so for this he has made my body black and blue."

"Throw off your friendliness," says the Minnesinger Reimar of Zweter, "and seize a big cudgel, and lay it upon her back, always better and better, with all your might, that she may know you as her master, and forget her badness." Still later the laws of some of the cities, like one of Hamburg of the year 1497, give exact determinations as to the right of the husband to chastise the wife.

On the other hand, the husband, as at least the moral censors of those times demand, was not to act as a hard-hearted, self-willed tyrant. "Hear this, ye good husbands,"—thus speaks Grieshaber in a sermon,—"Eve was not made out of a foot; that means that you are not to treat your wife disgracefully, nor to throw or stamp her under your feet. Many a one, indeed, does not do this, yet he treats his spouse in everything scantily, and never speaks to her in a friendly way.—Yet neither was Eve made out of the head; this means that the wife ought not to be above her husband. From what then was she made? Lo! she was made out of a side; and by this we ought to observe that the husband should hold his spouse rightly as himself and as his body. It is right that they should be one body and two souls." And if we would further hear a voice from the age of the Reformation, it is thus that Bullinger speaks in his little book on the married state: "Is there anything that displeases you, then speak openly and reasonably with your husband, that he may get rid of this or that. If there is reason in him, he will resolve to do it. It is not by the fist that we always and with every one obtain all that we would like to get. On the other hand, however, chastisement has none the less also its time and place."

Having thus looked at the position of women in the Middle Ages, we shall now pass on to the consideration of the formal conclusion of marriage as the act which effected the transmission of the paternal rights to the husband.

It will appear at once, from the whole previous description of the situation of women, that there could be no room for a free choice of a husband on her side. The father gave his

daughter to the man who appeared to him the most suitable; he betrothed her, and often promised his child at a time when she, even if it had been allowed her, could not have expressed her will.

"The nuptials arranging,
The bride-gifts exchanging,
The young pair unminding,
In marriage close binding,
They strengthen the bond."

So it is said of the holy Elizabeth and Count Louis of Thuringia, and yet she had just entered her fourth year and he his twelfth. How then could there be any question about their choice?

Such early marriages, however,—at least in the olden times,—were rather exceptions, and commonly a bridegroom of thirty years led home a wife of the same age. Yet even such a wooer did not carefully inquire as to whether he was sure of the inclination of the maiden of his choice; with cool calculating look, in the manner of our present peasants, he weighed the advantages and disadvantages of the proposed marriage against each other. He sought no love, and he offered none.

He desired a housekeeper for his home, a mistress for his farm, and a mother for his race; and in return he gave her protection and peace. In all this, his intellect was essentially active, the heart did not speak to the heart.

It would, however, be foolish to assert that all the marriages of that time were concluded without love; but the love of those days was of a substantial and masculine kind, even on the side of the woman. It was the conscious and sure surrender on her part to the man, with all the submissiveness that custom and right of the time imperiously demanded from her. But it was just this real side of the contract of marriage which constituted a sum of valuable rights, and these passed from the father or guardian to the husband; and this necessarily led to an indemnification which the latter had to perform to the former. Henceforth the daughter was no longer to be actively engaged in the household of her parents, nor was she longer to ply the spindle for the benefit of the paternal house; nor from this time had the father any longer the right to dispose of her by sale. All these advantages were now to be enjoyed by the husband, and,

in order to acquire them, the wife had to become his own; and thus he had to buy his wife.

Such a mode of wife purchase, however, which has been the subject of reproach as a sign of the special barbarism of the Germans in ancient and modern times, can only be ascertained from a few faint survivals of the custom. For although the laws and the chroniclers and poets all agree in mentioning the purchase of the bride, yet the more ideal view had then everywhere arisen, so that it is not the person of the woman herself that is sold and treated of, but only the rights that pertain to the guardian in relation to her. In this sense, the pecuniary advantages which flowed from the guardianship were taxed at certain fixed sums which it was necessary to pay to the guardian, and in this sense we are to understand the phrase which still occurs late in the Middle Ages: "He bought himself a wife."—The purchase of guardianship (*mundkauf*), however, was essential to the conclusion of the marriage, so that for instance among the Alemanni and the Bavarians, the guardian was free to dissolve the marriage again at will where such purchase had not taken place, and he could demand an indemnity, while among others the popular rights stopped with the latter condition.

These were the original forms of the German marriage. Crude and hard as they were, they were not without moral elements, and they were gradually smoothed and polished and transformed by the waves of civilization.

Attention has already been drawn to the fact that the nature of the paternal and marital power experienced deep changes from the influence of the Church, and the moral habit which was diffused by it. The more this was the case, the less became the extent of the paternal rights, and so much the more did the value of the guardianship diminish. And although it was only after the flood of the popular migrations had settled down, and the streams of the national life had found their calm bed, that the true value of the wife for the peace and prosperity of the household could become rightly known, yet this very knowledge brought immediately and necessarily with it a greater emancipation of the women.

Department of Medical Jurisprudence.

SCOTT HELM, M. D., EDITOR.

SIMULATION OF INSANITY BY THE INSANE.

BY D. R. BROWER, M. D.,

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The fact that insane persons do simulate symptoms of insanity not in accordance with the form of disease which they possess, is not generally recognized by the general practitioner, nor by the legal profession; yet it is a matter patent to all who have spent much time in the daily observation of these persons, and one of great importance in its medico-legal bearings.

In my early experience with the subject, there was admitted to the hospital of which I was then the medical superintendent, a patient suffering with acute mania of a violent type. About three months after his admission he began to improve, and he was transferred to a ward of more orderly patients. Yet he was daily making manifest the delusions of grandeur that had characterized his case from the beginning, but in such a quiet manner as to entitle him to more freedom, and to association with patients who were approaching rationality. On a certain occasion I entered the ward occupied by this patient, at an unusual time. My point of entrance to the hall was at the opposite end from the dining room, and as I entered, I heard a crash in the room.

I ran to the place, and there found the dining table upset, the floor covered with broken crockery and a harmless dement with towel in hand standing as if transfixed, looking with

amazement upon the scene. This dement rarely talked, and my appeal to him for the cause of the disaster was fruitless, although I spent some time in trying to elicit an explanation. The dining room opened upon a large veranda used as an airing place. I went out there and found my patient crouched upon the floor in one of the corners. I hailed him and asked him if he knew who had broken the crockery. He half raised his eyes in a vacant stare but made no reply. I raised him from his position upon the floor but he would not remain standing, assuming as soon as possible the position first occupied, one which is so frequently seen in the wards of the insane occupied by the demented cases. I watched him for some time and began to fear that he was passing into that most unfortunate state.

That day he had to be taken to the table and fed as a child; it was impossible to get from him any rational reply to a question, and much persistence in the effort seemed to excite him and then he would vociferate in a violent and excited manner. He continued in this demented state for about one week and then gradually returned to his former condition. His convalescence progressed very satisfactorily and in about three months he was ready for discharge. At this time, as was my practice, I took him to the office and there gave him some advice as to what should be his future conduct in order to avoid recurrence of the insanity. When I had finished and the time came to bid him adieu, he said to me, "Doctor, you never found out who broke the dishes that day in the dining room?" I said, "no." He said, "I did it. I went into the room and found the table covered with dishes and I could not resist the impulse to turn it over which I did, not supposing you were anywhere about; you came upon me so suddenly I scarcely knew what to do or say and I thought it best to go crazy, fearing I might be punished." This new form of insanity assumed by this patient, was so perfect in its simulation that it deceived all who were brought in contact with him.

There is nothing in insanity that in any degree improves the moral tone of the patients. If a person is disposed to

simulate, before he becomes insane, he will have the same disposition afterward.

The simulation of sanity is of frequent occurrence—the most astute physicians have frequently been deceived in this way. Delusions are so effectually concealed, and conduct seems to be so perfectly rational that patient after patient has been discharged long before recovery was reached. The insane are governed by motives just as the sane are; although the disease may modify their actions more or less, yet when it becomes an object for them to escape punishment or secure favors they can, and often do appear more insane or more sane as the case may be, than they really are.

Now this simulation of insanity by the insane must be confined to those forms of insanity that present more or less rationality. In cases of imbecility, in cases of dementia, in cases of mania during the violent stage, simulation would be impossible. But in all those cases that are sometimes called partial insanities, that are called moral or affectional forms where there is present more or less intellectual capacity, differing at times but little from a condition of normal mental activity, simulation is not only possible, but frequent.

Dr. Charles H. Hughes, in an admirable article published in the transactions of the International Medical Congress for 1876, says: "It is not difficult to suppose that a really insane person finding himself arrested and in the hands of the law on a charge of murder or other crime, which he knows he has been seen to commit, and from the penalty of which there seems to him no escape except through the plea of insanity, might conclude to simulate such a form of insanity as in his opinion would secure his exculpation. Such a person might not believe in the existence of his own real mental disease and might fear that those who were to try him would be equally incredulous. The insane are not conscious of the extent and degree of their own mental derangement. Admitting then the existence of a sufficient degree of rationality in an insane person to prompt an effort at self-preservation through the act of feigning, would he probably assume a more exaggerated form of mental disorder, just as sane men show it, with a view of making a favorable im-

pression and with the customary result of overacting and detection? We cannot reason out the answer to this question and practical illustrations are too few to enable us to generalize on the subject."

The same distinguished author quotes from the experience of Dr. Joseph Workman, the following case:

"Some ten or twelve years ago I met (says Dr. Workman) with a case of genuine simulation in a man who had murdered his wife. He had previously been a patient under my care, for about a year, when he undoubtedly was insane. Just as I was on the point of discharging him as recovered, he eloped. I did not use much exertion to recapture him. He went home to his farm, and got on well until his insanity returned, taking the form of jealousy of his wife, which I need not say, was utterly causeless. One day in the sugar season, in the bush, he killed her with a billet of fire-wood. He was apprehended, did not in fact try to escape—admitted his crime and was tried at the next assizes. I was summoned as an expert witness and had a long interview with him in the jail before the trial. I knew him at a glance and asked him if he did not remember me. He said that he did not, that he did not think that he had ever seen me. 'Why, John,' I said, 'you must remember me well, you lived in the same house with me for over a year, and talked with me hundreds of times. You remember being in the asylum?' No, he had no such recollection, but people told him he had been there. 'But you have not forgotten your old friend Mr.——,the steward?' He did not know him at all. And so on throughout our colloquy. I had the most thorough conviction of this man's stupid mendacity and bootless simulation, and at the same time of his insanity at the time of committing the murder, and I told both to the jury. He was acquitted on the ground of insanity and was committed to the asylum for criminals at Kingston, where he is still detained. Two or three years after his trial, as I was passing through the asylum in company with the medical superintendent, a patient stepped up and held out his hand, addressing me very courteously and inquiring after all my family. I did not recognise him until the medical superintendent told me

that he was my old friend, J C. 'Oh, John,' said I, 'how is it that you know me so well to day but did not know me at all in Guelph Jail?' His reply was, 'I did not want to know you at that time.' This man had certainly a very powerful motive for simulation of actual frailty, but he played his part too unsuccessfully to impose on my credulity. Jealousy was not the cause, but the form of his insanity, and when he had forever got rid of the subject of his delusions a sober after thought assumed the government. He was, as I believe, still insane, yet possessing the degree of stupid cunning which not a few insane people evince. He knew that he would be hanged unless acquitted on the ground of insanity, for in Canada murderers generally have but little chance of escaping the death penalty. Had he been thoroughly sane he would have known that sufficient proof of his past insanity both in the asylum and afterward, could have been procured, and he would have abstained from his clumsy simulation, or he would have acted his part more cleverly. I could not say that he committed the common error of simulation—overdoing his work. He did not rave, babble, or declaim or indulge in foolish antics and grimaces."

Dr. James G. Kiernan, in an admirable lecture on this subject,—(Detroit Lancet, May, 1884), quotes a case reported by Dr. Nichols, of the Bloomingdale Asylum, at New York, at the conference of experts on the Guiteau case, as follows: "A man committed murder, under, as he believed the command of the Virgin Mary, who appeared to him in the flame of a candle. Two young lawyers were assigned as his counsel; they advised him to feign insanity; which he did under the form of dementia. The experts, Drs. Nichols and Ranney, detected both the sham and the real insanity and had him sent to the asylum, where his insanity became unmistakable."

Dr. Ray, the distinguished Alienist, in discussing the case of Trimber,—(American Journal of Insanity, Oct., 1874), says: "Men who have been much conversant with the insane in hospitals, need not be told that, sometimes for one purpose, sometimes for another, they make a show of being more insane than they really are. Many of the insane do certain things as

well as they ever did. They plan, contrive, anticipate in the furtherance of a special purpose. The criminal classes, to which most of these simulators belong, know as well as any one else that the plea of insanity is one of the dodges whereby people now escape the punishment of their crimes, and they may not forget to argue accordingly when they are insane. Trimber being unconscious of his real insanity, but with mind enough to understand his situation and to remember what he had heard about insanity in connection with crime, concluded to make a show of being crazy.

Mirandon de Montyel,—(L. Enesphale, No. 1, 1882), has observed a case in which a woman killed her child. It was a case of primary monomania, but she feigned a form of dementia preceded by hallucinations and attended by amnesia. Her insanity having been demonstrated, she was sent to the asylum where her mental condition became apparent.

We had under our observation in the Eastern Lunatic Asylum of Virginia, for a number of years, an epileptic who would almost perfectly simulate an epileptic convulsion, for any small consideration. He was in the habit of saying to visitors walking through the grounds, "Give me a nickel and I will have a fit," and immediately upon receiving his reward would proceed to have a fit so perfect in all its details that it would have been difficult for an expert to have detected it.

Now that the passions and prejudices of the hour have passed away, we can calmly survey the case of Guiteau and have no difficulty in finding a family history and a life history such as can leave no doubt in the mind of the alienist to day, of his insanity at the time he fired the fatal shot. Yet his plea of transitory mental disturbance, and Abrahamic inspiration, and much of his conduct in court must have been simulation.

The case of Dacey, who was hung at Woodstock, for the killing of Alderman Gaynor, was a case in point At the trial at which he was convicted, the plea of insanity was presented, but very feebly pressed. Just prior to the time of his execution, on account of the increase in the development of his symptoms of insanity, another jury was called to determine his

mental condition. Five medical experts testified in the prisoner's behalf that he was insane and six medical experts called by the State testified to his sanity. At the head of the specialists for the prisoner, was the eminent alienist, Dr. R. J. Patterson, of Batavia, Ill., who made repeated examinations and gave much time to the study of the case. But the preponderance of medical evidence, six to five, was against the plea and the preponderance of eloquence was on the same side, and therefore the jury found Dacey of sound mind.

This case of Dacey was one of katatinic insanity, admirably discussed by Dr. Spitzka and Dr. Kiernan. At the time of his examination by the commonwealth experts he had one of these cyclical alterations in which they almost approach rationality, and he assumed a condition of dementia during his examination, foreign to his then state of mind, and in the court room, at the close of one of the sessions of the court, manifested violence and attempted an epileptiform convulsion that was probably simulated.

The night arter his final examination by the experts for the State, he told one of these experts in quite an extended conversation that he had very successfully deceived all the doctors; and this before their testimony was presented. Certainly no man with any reasonable amount of sense, would so destroy all hopes of attaining his expectations just as they were about being realized.

Dacey was born of neurotic parentage, had been a sufferer for years from violent head ache and fits of ungovernable passion, coming on without apparent cause, when his best friends would be the victims of his fury. Three of these attacks were called delerium tremens, but the friends of the man insist that he was not an excessive drinker, and on post-mortem examination, about the only normal organ in any of the cavities, was the liver. He could not possibly have been addicted to drink to any such extent as was represented, and for the time alleged, and possess such a liver. These fits of passion were followed by days of more or less intense mental depression.

The study of the case of Dacey is largely made up of the record of his life for about one year, as observed by the faithful

parish priest who administered to him during this period. He early noticed the cyclical character of Dacey's manifestations; he would find at one time a condition of mental exaltation, when he would talk of his own greatness, his marvelous power and influence over the people, of his great political capacity; he would strike theatrical attitudes, use declamatory gestures and indulge in long harangues that contained only few ideas but an immense avalanche of words—the pathetical emotional state with verbigeration, of Spitzka.—At other times he would find him standing in a fixed and immovable state, during which he would not utter a sound for hours together. At such times, his limbs or head would remain for a long time in the most strained position in which it could be placed—the cataleptoid state of the authors—then he would spend whole days without touching a particle of food; at other times he would find him very much depressed for days together —the melancholic state of katatinia; at other times for days he would appear almost perfectly rational.

Dacey did simulate during the last few days of his trial; the simulation was detected by the experts for the State, but the substratum of insanity was not recognized and the jury found him not insane.

On his way to the scaffold he made the following speech:

"Enter me in hell, ye thieving, lying scoundrels This mockery I despise. Blow the horn and let me advance and I will sound the key-note to my Creator. Let me out! Hell and furies, let me go below! Horrors! I won't—I wont go on now. Oh! Ah! Devils, master of hell, I defy your tortures. Not for palaces or diamonds or the towns of earth. Give me one moment—oh, spirits of torture, infernal furies of hell, let me outside; let me go on. Let the lying scoundrels at me. Thieves, rascals, I want none of this show business. My soul—life—spirit of all—ten millior devils! I face my Maker! I defy you all; liars, hosts of hell."

The post mortem examination of Dacey showed the brain in its gross appearance not particularly abnormal, as is so often the case in insanity. The brain, however, was internally congested, the superficial vessels especially large and tortuous and

the cavities filled with serum, probably due to his mode of death; but this passive venous engorgement has been absent as present in several post-mortems of such cases.

The thoracic cavity:—lungs, both the seat of extensive tubercular degeneration, remains of old adhesions in the pleurae —heart enlarged.

Abdominal cavity:—liver normal—mesenteric glands tuberculous—stomach and intestines congested—spleen congested and enlarged—kidneys both the seat of chronic interstitial nephritis—the peripheral blood vessels generally degenerated. The blood making, purifying and circulatory organs generally, except the liver, were all in an advanced stage of disease; so that for months and possibly years the nutrition of the nervous system must have been much impaired, so that the higher centers, those that give expression to the mental manifestations could not possibly have performed their functions properly. The important part of the nervous system that regulates the supply of blood to these centers being impaired, there must have been a very variable condition of these centers—now supplied with too little blood—now supplied with too much blood—their functional manifestations must have exhibited just such a cyclical history as was present in the case.

Such was the extent of the disease in these important organs, that a little patience on the part of the commonwealth (a few months only) would have placed his exit from the world in the hands of a higher power than that of the court which tried him.

In closing his admirable paper, Dr. Hughes says that the insane, like the sane, though on the whole more truthful than the latter, are not always altogether what they seem. In acting out their real psychic impulses, they are sometimes more crazy than they appear, and sometimes appear more sane than they really are. We have generally to scrutinize the insane character closely to comprehend it.

Esquirol, remarking on the value of constant observation in order to become familiar with the subject, expresses very nearly the truth —we must live with them to fully know them. Simulation of insanity may extend in action beyond actual

psychical effect or result of disease of the brain, just as disease of the stomach, lungs or other organs may effect in a greater or less degree all healthy function. Only death obliterates and destroys function, while disease, short of death modifies and perverts organic activity.

Is there anything in the nature of insanity as we recognize its different forms, incompatible with simulation? I think not, except it be in proving an advanced general mania and dementia. And from this cursory survey of the field, which grows wider as we survey it, I conclude that it is not only not impossible for the insane to simulate insanity for a purpose in any but its graver forms of proven general mental involvement, but that they do sometimes actually simulate acts and forms of insanity for which there exists no pathological warrant that can be discovered in the real disease by which they are affected.

In conclusion then, it is necessary for the medical expert, not only to show that a given case is one of simulation, but he must show that it is not simulation of insanity of the insane.

INSANE SUICIDE, INSANE HOMICIDE, OR MURDER, WHICH?

BY JAS. G. KIERNAN, LATE OF THE WARD'S ISLAND, AND COOK COUNTY INSANE HOSPITALS.

The *dramatis personæ* in the tragedy I am about to analyze were thus: One was an intemperate Scandinavian of American stock, who had committed crime under somewhat extenuating circumstances, and, being friendless was railroaded to the penitentiary in short order, thereby impoverishing his mother, who became a pauper after a life of laborious toil. She was a cleanly, thrifty person, destitute of pauper characteristics. The other person was a man whose mother had been insane before his birth and had so remained for thirty years thereafter.

He also had a paternal cousin who was insane with an hereditary type of insanity.

The alleged homicide had been sent to the penitentiary under the following circumstances: He had been robbed in a low boarding-house during the night by his room-mate, who disappeared. He found a pair of trousers containing a watch, which he seized upon. The landlady claimed it, he disputing her claim on the ground that he was entitled to keep it since he had been robbed. On his trial he insisted on pleading guilty of taking the watch as a return for his money which had been stolen. He treated the judge and jury with insolent indifference and was speedily adjudged guilty and sent to the penitentiary. His mental condition here is said to have been normal, but as ten congenital lunatics who attempted or succeeded in committing suicide were regarded as sane up to their attempts, the alienist expertness of the penitentiary officials was to be left out of consideration, more especially as the prison physicians were shown on cross-examination to be destitute of the most ordinary knowledge of anatomy, having been appointed chiefly for secret society and political reasons.

My own examination of the accused resulted as follows: He had one or two fits indicating epilepsy, when about 15 or 16 years old. On one occasion he started for bed, but immediately turned and ran down stairs and fell insensible at the foot of the stairs in a fit. After he came to his senses in about 15 minutes, he was frightened. Two weeks later he thought he saw a man at the head of the stairs when he started to bed; he turned, frightened, and would not go up for some time. With these exceptions there was nothing strange about his actions observed except that he was irritable. He lived with his parents (who were ignorant people) and worked in iron.

At my examination the epileptic pallor was well marked; the sides of the head were more than normally different, the pupils were dilated and morbid. There was greater sensitiveness on one side than on the other.

I found on one examination, little peculiar marks, trifling bits, on the base of the neck, which were unmistakable signs

that he had just got over an epileptic attack. He evidently had had one during the night. His conversation at one examination was peculiar. He had erratic religious notions, holding that the devil alone was responsible for the acts of the world. He used as an argument in favor of that, "Let not your right hand know what your left hand doeth," which seemed a very strong point with him. He said he was not a crank and would not be made out a crank.

Dr. Hosmer discovered many of these phenomena and also the hallucinatory delusions of the prisoner that rats brought him messages from the devil. Drs. Alexander, Curtis, and Oakes testified to having observed about the same facts, as did also Dr. S. V. Clevenger.

The significance of the tirade and convulsive phenomena just described may be judged from the fact pointed out by Forbes Winslow and others, that the premonitory symptoms of the fit are generally accompanied by terror. A child subject to epilepsy, for several hours before the attack rushes about the house in great terror. The peculiar pupils are regarded by the leading authorities as characteristic of epilepsy. The diagnosis of epilepsy is certain if peletchiæ be found. This is a symptom not to be premised and characterized. The asymmetry of the skull is also confirmatory of the diagnosis, as well as the lack of sensation, and the other symptoms mentioned.

The phenomena of epilepsy are as follows: There are two phases of epilepsy. In one case the loss of consciousness is of greater duration than in the other. One is called *grand mal*, or greater evil. The other is called *petit mal*, or the little evil.

Very few people would notice an attack of *petit mal*. The man might be sitting playing cards. Suddenly his pupils would dilate, his hands might drop. The cards might drop out of his hands, he would grow pale, then all would be over. He might pick up his cards and go on perfectly unconscious of the attack. He will still perform seemingly conscious and sensible acts; without knowing it might repeat something long passed. *Petit mal* is the most dangerous type of the disease. The attack is very sudden and leaves in the same way. As a rule an epileptic knows nothing of what he does during a

seizure, but has been totally unconscious. Insanity is likely to precede, take the place of, or succeed a fit. The insanity is especially likely to be of the mild types.

When epileptics are violent, they are extremely so; are most destructive and commit the most atrocious crimes. One epileptic chopped a man to pieces. No one had noticed but that he was all right, except a little foolish once in a while until after he had committed the act, when they found out he was an epileptic. An unsuspected epileptic mother chopped the head and arm and one leg off her child and when she came to was overcome with grief to find her child so mutilated. Another unsuspected epileptic woman baked her baby in a pan unconsciously. Excessive religious excitement, and unconscious praying is at times a marked symptom of epilepsy. An epileptic could seemingly have a plan and execute it.

Many cases of unsuspected epilepsy are brought to the asylums which evince no symptoms, and their epilepsy is first discovered by the physician, although by their surroundings they were not suspected of being epileptics. The German authorities state that a large proportion of criminal lunatics are epileptics, but never suspected of being such till after the commission of some crime. Epileptics often pass through life without any suspicion of epilepsy; being looked upon merely as a little foolish. When an act is done they know nothing of it, often saying—"I've been asleep," or "I didn't know it." An epileptic is generally one of the most unfeeling and selfish of patients, and between the violent attacks may seem a little irritable but work on without attracting any attention. Epilepsy is more apt to show itself about the age of puberty. Then it often does not occur for sometime; there may be a long interval between fits.

Of the circumstances attendant on the death of the deceased the best summary is given by Judge Mulkey, rendered in reversing the verdict of the jury, as against the evidence:

"The homicide occurred in cell 310, at Joliet, May 30, 1883. The deceased and accused were cell-mates and occupied the same cell. As the deceased and accused were alone in the cell at the time, it might be assumed as reasonably

certain that the deceased died by his own hand, or by that of the accused, as it is highly improbable both acted in concert. That the deceased died from the wounds is certain, but that they were inflicted by the accused is not so clearly established. The evidence relied upon is altogether circumstantial, as the accused denies he inflicted them. According to Merrill, one of the night guards, on watch, heard at 9 o'clock a terrific yell, as of one in terrible agony, when he at once started for the place, which he reached in about a minute, the screaming continuing all of the time. Looking into the cell he saw the deceased on his knees bent over a stool, holding on to the bars with his left hand. As soon as the guard got there he threw the light of his lantern into the cell and asked: "What is the matter?" Whereupon the accused said he had been asleep, and "guessed the fellow had a fit." On the demand of the guard the accused started to get down from his bunk, where he had been lying, when the deceased fell over in his cell. On the return of the guard with the key, and the night captain, he entered the cell and turned the deceased over, who gasped twice and expired. The guard then took the accused into another cell and asked him 'What did he do it with?' whereupon he was answered 'With my tobacco knife, made here to save my bread knife.' There was some blood on the hand of the accused which had, according to the guard's testimony, come from a wound the accused received the day before. When the accused was in the act of getting out of his bunk the deceased fell over. Then the accused at the guard's command resumed his place till the guard's return. There was found in the cell a tooth with blood on it, a common case knife, and dirk knife. The floor of the cell and the body of the deceased were covered with blood, but there was none on either the bunk or the bed-clothing, except on the corner of a sheet which hung near the floor. On the lower bunk it appears, that on the lower left leg of the drawers worn by the deceased there was blood.

The prisoner before the coroner's jury maintained great indifference. The only evidence relied on as showing motive in the accused to commit the crime, was the testimony of two or three convicts, who claim to have heard him a short time before the

death, express dissatisfaction with his cell-mate. To one of them, according to their statements, the accused said he 'could not get along with that cell mate of his.' To another he said the deceased was a crank—not to be surprised some morning to hear of him being carried out of the cell. To another that he could not get along with his cell-mate; that he was growling all the time; that it would not be a surprise to the boys in the wire shop if they heard of the deceased being carried out on a stretcher if they did not take him out.

"The last two of these witnesses were in the penitentiary for infamous crimes—one for grand larceny—the other for highway robbery; which, coupled with the fact that no complaint was ever made to any of the prison officers by the accused, entitles their testimony to but little consideration. Persons situated as these witnesses were are ever ready to seize upon the slightest opportunity to favorably attract public attention to themselves, in the hope of bettering their own condition. It is but reasonable to suppose, if the accused had had sufficient understanding to render him accountable for his acts, that had any serious difficulty existed between him and the deceased, he would have made complaint to some of the officers of the institution before resorting to such dreadful means of relieving himself from annoyance.

"Under this state of things the question arises what are the probabilities as to who inflicted the fatal wounds? Were they self inflicted or made by the accused?

"In attempting to answer this question the important query arises, was it possible for the deceased to have made these wounds with his own hands? It seems clear from the evidence that with a knife in one or the other of his hands he could have inflicted every wound found on his body, provided he was not prevented by loss of physical strength before the operation was completed. This in effect is admitted; nevertheless it is claimed by the people the wounds could not have been self inflicted, because, as is alleged, if the wound in the heart—the most fatal one—had been first made, death would have followed almost instantaneously, and before the deceased could possibly have inflicted the others.

"On the other hand it is contended if the less important wounds had been inflicted first, they would have caused such shock that the heart wound could not have been inflicted by him. This is the position taken by Drs. Campbell, Raynor, and Dougall in their examination in chief, but the force of their evidence is greatly weakened by admission made on cross-examination and references to admitted medical authorities which are somewhat inconsistent with the opinion expressed by them. On the other hand Drs. Oakes, Alexander, Hosmer, Curtis, and Kiernan, witnesses called by the accused, and Dr. Richards, a witness called by the people, swear that all the wounds might have been made by the deceased himself. Thus it was shown by the weight of evidence that the deceased might have inflicted the wounds himself. Strange as this case undoubtedly is, assuming the accused to be guilty, one of the most remarkable features of it is, that he should, by mere chance have made 33 wounds on the deceased without making one which it was impossible to be self inflicted.

"All but four were slight and unimportant, just such wounds as an insane suicide would be most likely to inflict. As to the probabilities whether the deceased inflicted the wounds, several things have to be taken into consideration—the size of the cell, its furniture, the wearing apparel of the two, and the cell floor after the death.

"The location and character of the wounds show t! .t the two parties were not in their respective bunks when the deed was done. The fact that the bed-clothing on the bunk of the deceased was free from blood stains, demonstrates that the wounds could not have been inflicted when he was in his bunk, and for the same reason the deceased could not have been in the bunk of the accused when the cutting was done. He must therefore have been on the floor. If the cutting was done by the accused, he must have been on the floor also. To do the cutting there he must necessarily be close to the deceased, and how could all this have been done without getting more or less blood on his shirt and drawers? The body of the deceased was saturated with blood, yet none was found on the accused except a small spot or two on one of the legs of his

drawers, which he accounted for by saying that he supposed the deceased had probably touched him with his hands while lying in the bunk. This is not at all improbable, yet the stain is much more likely to have been caused by the drawers coming into contact with the floor and walls of the cell, on which there was shown to have been a great deal of blood. As there was only 26 inches space between the bunks and opposite wall, which had more or less blood on it, it would have been even more remarkable if the accused could have passed from his bunk out of the cell without getting any stains on his clothing. The importance is to be attached to the stain on the leg of his drawers. Assuming that the cutting was done by the accused he must have got the blood on his feet, and stained the bunk sheets, yet no stains were found there. Assuming this by some unaccountable means to have happened, how was it possible to do all the cutting without getting a single stain on his shirt or hands? Yet to sustain the verdict below all this must be assumed as proven beyond a reasonable doubt. Conceding for purpose of argument, that the accused did the cutting, that the deceased was sane, and mad, would not then such resistance have resulted in the struggle as to attract the guards? Would not something more have been heard than inarticulate shrieks? Yet this did not happen. Nothing was heard by any one. Furthermore all circumstances considered, it is clear no such struggle took place.

"Then think of such a struggle without leaving a single bruise on either party! Would it not be taxing human credulity too much to believe that this might have happened? Not one of the wounds was a contused one, nor was a scratch or abrasion made on the accused. Surely this could not have been the case if a struggle had taken place.

"But this is not all. Turning to the wounds themselves, it is found that most of them must have been inflicted by blows or thrusts, given from right to left, indicating both method and deliberation which in connection with the fact already stated, that most are slight and trivial, seemingly indicative of mutilation merely, strongly negatives the fact that there was a struggle. If then there was no struggle, we must upon the

hypothesis of guilt assume that the deceased quietly submitted to butchery; a hypothesis still less admissible. The case made by the prisoner as to his insanity is a strong one. His testimony, deportment, manner of testifying and general bearing greatly strengthened his case.

"His hereditary history added to his clinical history, and the positive opinions of eminent medical experts, made the case yet stronger. The opinions of these witnesses seem to be strongly fortified by medical authority, and the witnesses themselves are evidently men of great learning and research."

A new trial was granted, and subsequently, during a paroxysm of frenzy, he cut his throat. On his recovery he always denied he attempted suicide, but claimed that three men entered his cell and did it. Subsequent to his recovery from his wounds he confessed he killed Anderson, but the confession disagreed with and contradicted all the witnesses for the State. At the time of this confession the opinion was pretty generally held that the prisoner would be sent to an insane hospital. He repeatedly declared he would rather be hung than be declared insane. The jury found him guilty, but fixed the penalty at imprisonment for life, urging that if found insane and sent to an insane hospital, he would soon be let out. The herculean labors of Judge Wing in this case deserve recognition. Appointed by the court to defend the prisoner, his skill convinced the Supreme Court, myself, and I believe the last jury, who first believed in the insane homicide theory, that the insane suicide explanation was the true one. The logical chain of evidence presented is supported by the strongest medical authorities.

MEDICAL LEGISLATION IN MINNESOTA.—Previous to March, 1883, the State of Minnesota was without medical legislation. Perceiving the necessity of legislative restrictions, Dr. P. H. Millard and Dr. J. Davenport of St Paul, drafted a bill following closely the act to regulate the practice of medicine, in effect in the State of Illinois, prior to July 1, 1887. A State board of medical examiners was organized under the provisions of

this act, effecting many beneficial changes in the profession of that State. Later the Board, finding that the course of education of numerous medical schools in this country, was insufficient for the proper education of medical students, drafted the bill which is now in effect.

This act requires that all candidates for licenses to practice medicine shall present evidence of having attended three courses of lectures of at least six months each before they can appear before the examiners, and no one can obtain a license to practice in that State without first passing the examination of the Board. Diplomas, degrees, or licenses from colleges or other Boards are not recognized as entitling possessors to practice. "No member of any college or university having a medical department shall be appointed to serve as member of said Board," and also, "when so desired said examination may be conducted in the presence of the dean of any medical school or the president of any medical society of said State."

In these days of close corporations for medical schools where the competition for medical students is as great as it is, the only means of raising the standard of medical education to the proper degree, is by such legislation as will make it compulsory, in order to obtain the necessary authority and license to practice medicine, for colleges to lengthen their courses and require as conditions of graduation, such a standard as will enable their students to meet all legislative requirements.

Everything in this direction should meet the hearty support of all medical men in all parts of the country, and great credit should be given to Drs. Millard and Davenport for their labors in this direction.

Our thanks are extended to Dr. E. S. Wood, of St. Paul, Acting Secretary of the Minnesota State Board of Medical Examiners for copies of the act and information sent.

Editorial Department.

THE LAW TIMES.

We have heretofore avoided publishing in the magazine the favorable notices which have appeared from time to time in other journals, preferring that the Times should speak for itself.

We cannot refrain, however, from giving to our readers the following letter from Justice Magruder, which we publish by permission.

Encouraging and commendatory letters have also been received from other judges in the City, and from Justice Craig of our Supreme Court, and Justice Bradley of the Supreme Court of the United States.

SUPREME COURT OF ILLINOIS.

Chicago, 71 Court House, Jan. 21, 1888.

To C. V. Waite & Co.:

Accept my thanks for the Jan. No. of "The Chicago Law Times." I have examined such of the articles in it as time has permitted, and have been much pleased with them. They are of a high order and are marked by much ability. Such a magazine, fearlessly criticizing what is wrong in the administration of justice and as boldly upholding what is right therein, cannot fail to be of service to the bar and to the people. Enclosed I send $2.00, the amount of subscription for the current year. Very respectfully,

B. D. Magruder.

[From the Law Journal, London.]

We have received the first number of the Chicago Law Times. The production of this first number is highly creditable to the learned lady whom we now have the happiness to count among our contemporaries. The motto on the cover truly says that 'the machinery of law needs mending,' and we see no reason why, if they wish it, women should not try their hands at mending.

[From the Albany Law Journal.]

The Chicago Law Times is a handsome quarterly of about one hundred pages, edited and published by Catharine V. Waite, with an interesting table of contents, &c. The number is bright and readable, and shows scholarship without pedantry, and thought without mysticism.

[From the Woman's Journal, Boston, Mass.]

Mrs. Catharine V. Waite, of Chicago, has commenced the publication of the Chicago Law Times, a quarterly magazine, larger than the Century. If the succeeding numbers are equal to this, the Law Times will not only make its way, but will hold a high rank among magazines. Mrs. Waite is herself a lawyer, an active business woman, and a very able one. Dis-

tinguished lawyers are contributors to this magazine. The contents are varied and interesting from first to last.

[From the Boston Literary World.]

Chicago offers a competitor to share in the somewhat meager patronage which has been bestowed on law journals, in the Chicago Law Times, edited by Catharine V. Waite. Leading topics in the first number are, the Life of Chief Justice Chase, and timely discussions of the Labor Question, The Legal Aspect of the Boycott, The Mormons and the Treaty with Mexico, Constitutional Amendments, and Admission of Women to the Bar. Thus it will be seen that this magazine does not indulge in the half cooked reports of recent decisions, the hash of the digests, and the warmed over portions of the text-books, so common in some of the legal journals. Price, $2.00 per annum.

Since the foregoing was in type, we have received the following letter from Chief Justice Scott:

Bloomington, Ill., Feb. 7, 1888.

C. V. Waite & Co.:

I find the previous numbers of your "Chicago Law Times" to be of great interest, and if the subsequent numbers shall be kept up to the same high standard it will be a work of very great interest and value to the general reader as well as to the Bench and Bar.

Enclosed find $2.00 for subscription for current year.

Respectfully,

John M. Scott.

NOTES OF TRAVEL IN THE MEDITERRANEAN.

NAPLES—POMPEII—VOYAGE TO SICILY—A QUARANTINE—ITALIAN VERSIFICATION—SICILY—VOYAGE TO ALEXANDRIA.

On the 18th of November, 1886, I left the Eternal City, after a sojourn of two months, turning my face southward.

Early the next morning arrived at Naples, after a night ride on the cars.

Railroad traveling in Europe I found much the same as in this country, save that every thing is more systematic, and the coaches more comfortable, unless the comparison be made with the sleepers here.

Before leaving Rome I had once more visited the principal ruins—had stood upon the staircase leading from Capitol Hill, and had feasted the eye, for mayhap the last time, upon the expanse of ruined walls and columns terminated by the grand old Coliseum.

In Naples, after looking over the morning papers, which were full of news of the war which seemed impending with Russia, I visited the museum, one of the most extensive in the world, and afterward the ruins of Pompeii.

The principal attraction of the museum was the group of statuary called the "Taurean Farnese," or Farnesian Bull; which is, in some respects, the most magnificent group in the world, not excepting the Laocoon. The Laocoon may be superior in some respects. But in the arrangement, the grouping—the expression generally, as well as in the general execution, it is doubtful if this is surpassed by any piece of statuary in existence.

It was discovered in the baths of Caracalla, considerably broken, and was restored under the direction of Michael Angelo. This celebrated group represents the two sons of Antiope tying Circe to the horns of a savage bull, to avenge the torments which she had caused to be inflicted upon their mother. Antiope stands near with her arms extended, imploring for the pardon of her rival, which she finally obtains. The whole group was originally chiseled from a single block of marble.

The ruins of Herculaneum no longer attract attention, but those of Pompeii are very interesting. There are the brick and stone walls of an entire city, 1800 years old, standing to the average height of fifteen or twenty feet.

Scarcely a roof to be seen; once in a while an arched roof only; but both the exterior and the partition walls are standing, with great regularity.

The walls have been repaired in some places, since the excavations were made, but the quantity of work of that kind is not very great.

These walls have not been exposed to the atmosphere much over a hundred years; some of them not that long; which fact accounts for their being so well preserved. Nearly every thing movable has been transferred to the Museum in Naples. So also from Herculaneum.

The streets of Pompeii may be traversed for a long ways. They are narrow and some of them winding, and have continuous rows of houses on each side. There are temples also, a theater and amphitheater, with the seats remaining, and many columns are standing, which supported these and other edifices. In some of the houses may be seen paintings on the walls, and remains of mosaic floors. The streets are paved with large, smooth, surface stones, not square and jointed together, but oval; and as they now are, they would make a rough road for carriages and wagons.

I found it very difficult to realize that the city had ever been covered with lava. It was some distance to the foot of Mt. Vesuvius, and the surface of the intervening ground seemed somewhat lower than that of the city itself. It was after I returned to Naples, and took in, with the eye the entire range of country, that I could understand that a mountain of lava had flowed from the heights of Vesuvius upon the doomed city.

A good deal of smoke is issuing from the volcano, and a new crater has

been formed within two or three weeks on the side toward Pompeii, which in the evening presents a line of fire for a considerable distance. A new eruption is expected soon to take place. The water in the wells near the foot of the mountain is said to always grow less, shortly before an eruption, and that is the case now.

Tuesday, Nov. 23. Visited Puteoli. In some respects I was disappointed with these ruins, particularly with those at the Temple of Serapis. Every thing portable had been taken to the Museum at Naples, even including the capitals of the pillars. The amphitheater is interesting. It is nearly as large as that at Verona. The walls are not standing to any great height, but the graded seats are there, unless there was marble or other covering over them, these being plain masonry.

The view of the bay, the winding shore, the sea and the mountains, is very fine at and near Puteoli. It reminded me strongly of the seaport Hilo, on the Island of Hawaii, the largest of the Sandwich Isands. That country, like this is volcanic, Hilo being at the foot of a volcanic mountain much larger than Vesuvius. Returning to the City I could see how much Naples has lately extended in the direction of Puteoli. Large blocks of handsome houses were just being completed.

Wednesday, Nov, 24, sailed in the Italian steamer "Leone" for Sicily. In embarking at any port on the Mediterranean, one has to fight against the extortionate charges of the boatmen, who are utterly conscienceless in their exactions. I should advise those who do not understand the language of the country, to place this matter in the hands of their landlord, under a prearrangement as to price.

After coasting along the Italian shore, passing occasionally a village or city of considerable importance but all similar in appearance, situated at the foot of mountain ranges, we arrived at Reggio. As I went on deck in the morning, a magnificent scene was unfolded to view. The weather, which had been cold at Naples, was now mild and pleasant. The air was clear—the bay was calm—the sky was bright and beautiful. The shore on either side exhibited a semicircle studied with houses in every direction, and bounded by ranges of mountains. Just before us to the east was Reggio, with its semicircle of white buildings fronting on the sea. To the north this line was continued, with scattering houses for some distance. To the northwest, in plain sight, was Messina, a city of 250,000 inhabitants, lying within a semicircle of its own. Villages and houses lined the Sicilian shore also. To the southwest was Ætna, looming up above the surrounding mountains, its upper half covered with snow,

and smoke and fire coming from the top; not belching forth a short distance, then trailing lazily down the mountain side, as was the case with Vesuvius, but shooting far up into the heavens, and mingling with the clouds.

Arriving off Augusta, on the Eastern coast of Sicily, we were subjected to a seven days quarantine. This was somewhat tedious, but there was a jolly company of Italians on board, and what with conversation, reading, games, and the usual shipboard amusements, we got along tolerably.

On the fourth day I tried my hand at some Italian versification, which was by request read at the breakfast table, and, as coming from a foreigner, was favorably received. As these notes are necessarily somewhat of a personal and desultory character, intended as a passing relief from the severer contents of the "Times," I will make no apology for here giving to the reader this bold attempt upon a foreign language.

LA QUARANTENA.

Ecco, la quarantena!
Sette giorni in Augusta.
Non molto spiacevole,
Ma benino, benino.

Venezia, Calabria,
Oppure Buenaventa;
Tutti i paesi d' Italia
A bordo del Leone.
Ed un signore straniero
Solo, un Americano.

Gli Italiani gentili,
Le signore hanno multa bonta;
Giocare, parlare,
Cantare, ballare,
E molto piacere.

Ecco, la quarantena!
Sette giorni in Augusta.
Non molto spiacevole.
Ma, benino, benino.

The next day a shadow fell upon the company. A deck passenger had died, and it was whispered about that it might be the cholera. In that case the vessel would proceed to another part of the Island and the quarantine be extended twenty-one days. Seven days had been barely tolerable; the thought of twenty-one days more could not be endured.

According to the regulations, a physician at Augusta should come on board and examine the case. But the ship's physician reported the case as non-cholera, and the local physician, fearing, perhaps, that he might be obliged to differ with him, did not come aboard at all, and our doctor returned with the joyful news of a disembarkation, to be made the next day. All was now joviality; and having had tolerable success before, I again invoked the muses. The following is the result, and the passengers were in sufficient good spirits to receive it with hilarity:

LA QUARANTENA.

II.

Il quarto giorno, ecco!
La morte trista a bordo.
Subito il grido cambiato.
Non piu benino,
Ma malino, malino.

Non piu cantare,
Non piu ballare,
Ma il serio parlare,
E poco giocare.

Tutto in tempo
Adesso imminente
Un altra quarantena.
E gia con lunghe faccie,
Bisbigliano i passegieri,
'Ventuno giorni un po troppo,
Ventuno giorni un po troppo.'

Ma ecco un medico
A bordo del Leone,
Con scienza ed eloquenza
Rese certo lo sbarco.

E gia il grido cambiato.
Non piu malino,
Ma una volta ancora,
Ecco la quarantena!
Non molto spiacevole,
Ma benino, benino.

On the morning of the 3d of December, we disembarked, and an hour or two afterward I was in Syracuse. Here I revelled among the Greek and Roman ruins for a week. Syracuse exhibits more evidence of antiquity than the other ancient cities. In those the old structures have to be picked out from among the new. But here they show themselves at every turn.

The vice-consul at Syracuse was also postmaster. While I was in his office he received a letter from the Department at Rome, complaining that mice had several times been found in the mail bags from Syracuse and that they had destroyed some mail matter. He treated the matter as a good joke, enjoyed a hearty laugh at the expense of the General Post Office Department, and cried out: "Just as though a body could prevent mice getting into a mail bag occasionally!"

December 9, took the cars for Catania, thence to Messina. At Catania visited the remains of a Greek and Roman theater, which were exceedingly interesting; the Greek having been built about 400 B. C. and the Roman super-imposed in the same place, and upon the same foundation 400 years later.

There are no horse-cars in Catania, though the City claims 100,000 inhabitants, and there is but one public omnibus. The streets are kept the cleanest of any I have seen

December 12, embarked at Messina, on the steamer Giava, for Alexandria, where we arrived on the 15th. The first thing seen from the boat was the City in the distance, then the shipping in front of it, then the extensive clay banks, with a good many wind mills. Lastly the long pier

consisting of huge granite blocks thrown promiscuously one on top of another. The upper ones were cut in the form of regular cubes.

When the boat had cast anchor, there was an animated scene, the water being covered with Egyptian small boats hastening toward us and competing for passengers; the natives dressed in the cap, frock and overjacket, with a bright contrast of colors.

Going through some of the poorer streets on the way to the hotel, every thing seemed yellow and dirty, many of the natives appearing as if just cut down from a smoke house. But the next day I found streets new, clean and handsome.

C. B. W.

THE RUSSIAN QUESTION.

The peace of Europe is disturbed, and war, which has been imminent for three years, seems difficult to be averted.—The principal disturbing factor is, as it has been in several previous wars, the ambition of Russia.

The breach of the treaty of Paris is a mere pretext. Though the great powers have a right to name the Prince of Bulgaria, if the other powers are willing to waive that right, there is no reason why Russia, if she really desires peace, should not also do so, especially since it has been shown that the reigning Prince is popular with his own people.

Too much was yielded to Russia when Prince Alexander abdicated the throne, a step he never would have taken except upon the advice of Bismark, who was willing to sacrifice every thing in Bulgaria to what he considered the then present advantage of Germany. The German blood that flowed in the veins of Alexander was nought to the Mephistophelian statesman, who coolly stated in debate at the time, that the friendship of Russia was worth more to Germany then that of all the friends of Bulgaria, in Germany.

Alexander had shown himself a brave soldier and a wise ruler. He was idolized by his people, and had he, even then, notwithstanding the advice, which was by no means given as an ultimatum, stood his ground, as the ruler of a people who were determined to be independent, there would have been a war, it is true, but it would have been a war which could not long have been averted. and which would have resulted in the independence of Bulgaria, and probably of Poland. The Bulgarians, under

his leadership, would have fought like lions, as they did in the short and decisive struggle with Servia. When that struggle commenced, the Austrians and most of the foreign residents at Vienna were looking for an easy and triumphant march of the Servian army to Sophia, and the news of the disastrous defeat of that army came like a clap of thunder from a clear sky. Moreover Bulgaria would have had the support of Austria and of England if necessary; and more than likely even of Servia herself.

The ambition of Russia has been, as now, the principal disturbing factor in European affairs, for over a century. Not satisfied with her immense territory in Europe and elsewhere, she has been, for a hundred and fifty years, steadily extending her possessions and increasing her influence, to the east, southeast, south and southwest. To Siberia and her other Asiatic possessions, she had added, in 1745, a large territory northwest of the Chinese Empire; in 1783, a considerable tract of country on the northern shore of the Black Sea, on both sides of the Sea of Azof; from 1814 to 1828 a smaller tract between the Black and the Caspian Seas, thus giving her a broad roadway between these waters; in 1863, an immense territory extending all the way from China to the Caspian Sea; in 1867, Tashkend and Turkestan, with a large country east of the Aral Sea and on both banks of the Syr Daria River, extending eastward almost to Khokand; in 1878, another small piece at the eastern Shore of the Black Sea, to broaden and complete the roadway referred to; in 1880, a similar piece on both sides of the Irtish River, on the confines of China; in 1883, Khokand and Samarcand, pressing hard upon Bokhara, Khiva having been taken some time before; and in 1884, another large territory bounded by Bokhara on the east, Persia and Afghanistan on the south, and on the west by the Caspian Sea.

In that year Russian troops took possession of Old Sarakhs, on the Hari-Rud River, at the meeting of the three frontiers of Persia, Afghanistan and the Turkoman country, thus commanding all central Asia. Sarakhs is forty miles nearer to Herat than Merv; which previously had been the limit of the Russian advance.

In 1885, at the imminent risk of a war with England, the Russian forces actually crossed the Afghan boundary. The English became alarmed and made an attempt to settle the boundaries which should limit further progress. A Commission was appointed. The Russians insisted upon Zulfikar Pass, the same through which Alexander the Great had led his victorious forces more than two thousand years ago; but the British lion was found crouching in the Pass, guarding the entrance to India; and

one fine day—it was on the 24th of August, 1885, the morning papers at St. Petersburg made the announcement, from official sources, that the Russian Government had concluded not to insist upon retaining Zulfikar Pass; adding that since a new topographical map had been received, it had been ascertained that in a strategical point of view, it was of no importance! The Russian who, after reading this, should take a stroll into the summer garden of St. Petersburg, would notice among the carvings upon the statue of the Russian fabulist Krulow, an exquisite marble representation of a fox turning away disgusted from the luscious bunch of grapes which he could not reach. But then the same Russian, upon returning and again taking up the paper, would find, in close connection with the unwelcome intelligence, a salvo to his wounded pride, in the news that Corea had acknowledged the supremacy of Russia.

It was afterward announced that the boundary had been agreed upon. But this settlement can hardly be permanent. No British statesman doubts that Russia has designs upon India, and the first devolopment of these designs will be an advance upon Herat.

At an expense of $45,000,000, Russia completed her road from the Black Sea to the Caspian.

The Russian vessels float upon the Caspian and her naval stations are established on its Persian shore. Her fleets are on the Aral, the Jaxartes River and the Oxus. A railroad was built some time ago from Balkan Bay to Askhabad and has been since completed to Merv, within two hundred and forty miles of Herat, the key to India. The cost of completion to Herat by way of Sarakhs is estimated at but little over eight millions of dollars. A connection between Quetta, the western terminus of the English Indian railway system and Herat, would bring London within ten days of Calcutta.

In an able and instructive article published in the April number, 1887, of the Atlantic monthly, written by W. H. Ray, of this city, the situation is thus summed up:

"The Russians, if not actually possessors of Herat, are at its gates, and they are not likely to recede from their present position; nor, judging England from her past record, is the government of the Queen of Great Britain and Empress of India likely to give fight to the Russians on the score of any danger threatened short of the actual occupation of Herat. When the steppe was crossed in 1863, England protested, and said she would declare war if the Russians advanced farther into the three Khanates. Gortschakoff's circular, already quoted, allayed English fears, and when Russia, soon after, occupied a part of Khokand, no war was declared. Several times this farce was repeated, but when at last Russia, by the annexation of Khiva, planted herself firmly on the right bank of the Oxus.

both parties agreed that the crossing of that river by the power of the north should be a "casus belli." Soon after the Oxus was crossed; Geok Tepe, Askhabad, Merv, Sarakhs, the Zulfikar Pass, Ak Robat, Sari Yazi, passed under Russian control,—some only oases, but others beautiful cities in fertile valleys, and all places of importance, each bringing Russia nearer to, and then into, the country of the Afghans, which has all along served as a buffer between India and advancing Russia. Yet England has not declared war, and the student of these events begins to wonder if, after all, the Tsar will not soon lay his measuring rod along the boundary line of the Indies.

"Whatever one's opinion as to the justice of Russia's occupation and and claims, or the honorableness of her methods, he cannot but express wonder and admiration at the persistent maintenance of a purpose conceived nearly two centuries ago with almost infinite foresight, and executed in the face of frequent defeat, danger, hardship, barbarism abroad, and dissatisfaction and threatening anarchy at home; a plan devised with shrewd cunning, and persevered in by brave, devoted, ambitious, unscrupulous, audacious generals. * * *

"Twice during the present century has the invasion of India been proposed, once by Napoleon the Great to Paul I, and a few years later by the same general to Alexander; it is said on tolerably good authority that the same proposition was seriously considered by Tsar Nicholas in the early days of his reign.

"Russia openly disavows any such design, but on no other hypothesis is it easy to explain satisfactorily her later advances directly toward the Indian frontier, where, as some recent writer has said in substance, her presence must be a perpetual menace to the prestige of English government and arms, and a constant injury to English commercial prosperity.

"If the struggle for the final possession of India and Constantinople must come, we can but wish that the Anglo-Saxon blood of Western Europe may gain the victory over the descendants of the old Tartar race. Should the advance of Russia be stayed at Herat, we would hope that the great nation which now possesses more than one half of Europe and considerably more than two fifths of all Asia, and which has a population of one hundred million souls, may learn the lesson of freedom and justice, and may teach it in turn to the barbarian hordes of the conquered lands and so do its part toward bringing on the day of peace, and of faith in all that is true and noble.

"Russia is the youngest as well as the vastest nation of Europe. Her national life began hardly two hundred years, her national literature only one hundred years ago. "She stands," says one of the bishops of her church, "on the threshold of the morning." The danger that threatens India and Europe is not that of Russian aggression, but of Russian absolutism; if this danger be averted, the day of liberty and light opens for her and her subjects. The question of Russia in Asia will no longer disturb English statesmen, but will be determined in the interests of the state and of humanity."

While the eyes of the world are directed toward Bulgaria and the Balkan provinces, the longing eye of the Tsar roams over all Asia as far as Corea, and as the glance comes back to the Balkans, it rests for a while upon the glittering mosques and minarets of Constantinople.

MR. JUSTICE LAMAR.

Mr. L. Q. C. Lamar, recently appointed by President Cleveland to fill the place upon the bench of the Supreme Court of the United States, made vacant by the death of Mr. Justice Woods, entered upon the duties of his new office on the 18th of January, in the presence of the full bench.

There was quite a large attendance of members of the bar, and the memorable occasion was particularly graced by the presence of many ladies.

Promptly at 12 o'clock, the justices, wearing their black silk robes, filed into the court room from an ante chamber, and were immediately followed by Mr. Lamar, who wore a suit of black, and took his seat to the right of Mr. Justice Blatchford and beside Mr. J. H. McKenney, the clerk of the court.

The customary proclamation of the assembling of the court was then made, viz.: "The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States: Oyez! oyez! all persons having business before the Honorable Supreme Court of the United States are admonished to draw near and give their attention, for the court is now sitting. God save the United States and this honorable court."

Chief Justice Waite then unrolled a large sheet of parchment, and announced that they had received the commission of L. Q. C. Lamar as Associate Justice of the Court, and ordered that it be read by the clerk, which was accordingly done.

The Chief Justice then enquired: "Is Mr. Lamar ready to take the oath?" Mr. Lamar bowed, and indicated that he was ready. Mr. McKenney handed him a parchment, upon which was inscribed the following oath:

"I, L. Q. C. Lamar, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Associate Justice of the Supreme Court of the United States, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States, so help me God."

Mr. Lamar read the oath in a clear voice, and in completion of the ceremony kissed the bible which was handed him by the clerk, Mr. Mc-

Kenney. The newly qualified justice then retired to the corridor in rear of the bench, where he was robed. During his momentary absence, the court and entire audience rose to their feet in respectful welcome and recognition of the new associate justice, who was then escorted by Marshal John M. Wright to his seat on the extreme left of the Chief Justice.

The justices all bowed to their new associate, who in return bowed to them and to the members of the bar and audience. He then took his seat, fully invested with "all the powers, privileges and emoluments" of his high office.

The Supreme Court now sits with its full compliment of nine justices, for the first time since the 4th of May, 1885.—(Wash. Law Reporter.)

THE LEARNED WOMEN OF BOLOGNA.

We give the following extracts from a scholarly and interesting article published in the Woman's Journal, of Boston, and written by Mary A. Livermore, a woman who is well known in this City, and who has acquired a national reputation as an orator and a writer:

"The date of the foundation of the University of Bologna is uncertain. Documents held in its archives indicate that it was founded by Theodosius II, A. D. 425, and was restored by Charlemagne, the latter part of the eighth or the beginning of the ninth century. It took on great glory in the twelth century, when Irnerius was called to the professor's chair by the woman friend of Gregory VII, the noble minded Countess Matilda. The fame of his erudition and the splendor of his eloquence attracted the attention of all learned Europe, and crowds of students flocked to hear the great jurisconsult and to learn of him.

"This was about 1116, and by the year 1250, ten thousand students were attending the schools of the University, devoting themselves to philosophy, jurisprudence and medicine. A diploma from Bologna became at once "a passport to office throughout Christendom." As a matter of course, libraries and literary institutions were the outcome of this educational work, and women were quickened to new life in this studious and literary atmosphere. * * *

"The public examination took place in the cathedral, before the dignitaries, the college of doctors, the students, the ecclesiastics, and the principal inhabitants of Bologna. The aspirant for the degree, before this notable assembly, was called upon to read a thesis, expound some knotty law point, and maintain and defend his or her explanation of it, against all disputants. If victorious in the contest, the degree of doctor, with the

cap and gown, was won and duly awarded." The records of the University show that many women won this degree, and were invested with its insignia.

"The legal schools of Bologna were so famous as to overshadow those established in other departments, but these also enjoyed great celebrity. Women won full degrees in medicine, and some were professors of anatomy. * * *

"As far back as the thirteenth century, when the widely celebrated University numbered ten thousand students, many coming from England and Scotland, there were two women among its eminent professors,—Accorsa Accorso and Bettisia Gozzadini. The first filled the chair of philosophy, and was the daughter of the famous jurisconsult, Accorso, whose glossary of Roman law was, for years, authority with all European tribunals. Of Bettisia Gozzadini, it is related that she was created doctor of laws in 1236, and lectured publicly to the admiration of crowded audiences.

"Mention is made by several writers of a very learned woman, who was also invested with the docter's degree, and wore the cap and gown, and who was a 'venerable woman' in 1354, Madonna Giovanna Buonsigniori by name. She was skilled in legal and philosophical lore, was accomplished in Latin and Greek, and discoursed in the German, Bohemian, Tuscan and Polish languages. The people of Bologna honor her name to this day.

"Every one is familiar with the story of the beautiful and learned professor, Novella d' Andrea, daughter of the eminent jurisconsult, Giovanni d' Andrea, distinguished in the fourteenth century. Christine de Pisan, in her "La Cité des Dames," gives a quaint sketch of Novella, which, perchance, the author received from the father of the fair woman professor. 'Giovanni d' Andrea so much loved his good and beautiful daughter, named Novella, that he taught her letters and law, so that when he was occupied with any care, he might send her to sit in his chair and teach his pupils. And so fair was she that a little curtain had to be drawn in front of her, lest her beauty should cause the thoughts of her listeners to wander, and her instruction be of no avail to them. And in this manner she many times supplied her father's place, who loved her so much, that, to bequeath her name to posterity, he gave a famous lecture from one of his treatises on law which he called after her, 'The Novella.' The pictures of Novella show that she possessed the beauty accorded her by fame."

We regret that space will not permit us to copy more of this interesting and instructive article.

ARGUMENTS AGAINST WOMAN SUFFRAGE, BY JOHN J. INGALLS, CAREFULLY EXAMINED AND COMPLETELY ANSWERED; BY D. P. LIVERMORE.—This is an exhaustive and complete refutation of Senator Ingall's Forum article, which, by the way, is the weakest effort the distinguished Senator ever made. The subject was a new one to him, and he had not sufficiently examined it. He made the most egregious mistakes of fact and of logic.

CHIEF JUSTICE WAITE.

THE CHICAGO LAW TIMES.

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MORRISON R. WAITE.

MORRISON REMICK WAITE, late Chief-Justice of the Supreme Court of the United States, was born at Lyme, Connecticut, November 29, 1816. His ancestors came from England in early colonial times and settled in Massachusetts, but removed to Lyme about the year 1677. One of the earliest whose name has been preserved was Thomas Waite, whose son Marvin was on the first electoral ticket of Connecticut after the revolution, and served nineteen times in the General Assembly, and as judge of the County Court for several years. Remick Waite, who married Susanna Matson, was a half brother of Judge Marvin Waite. The eldest son of Remick, Henry Matson, was born in Lyme, February 9, 1787; graduated at Yale College in 1809. A lawyer of learning and ability, he was successively elected to both the lower and higher branches of the State Legislature. In 1834, he was chosen an associate justice of the Supreme Court of Connecticut, and in 1854 was appointed Chief-Justice of that court, which office he held till he reached the age of 70 years, the limit prescribed by the State Constitution. He married a daughter of Col. Richard Selden, of Lyme, and granddaughter of Col. Samuel Selden, an officer of the revolutionary army. Morrison R. Waite is the oldest of the eight children of Chief-Justice Henry Matson and Maria Selden Waite.

When about fourteen years of age, he studied Latin and Greek at Bacon Academy, in the town of Colchester, Connecti-

cut, under the preceptorship of Charles P. Otis. Lyman Trumbull was then his school-mate and fellow student. It was there that young Waite fitted for Yale College, which he entered in 1833.

In 1837, he graduated with honor, in the same class with William M. Evarts, Edwards Pierpont, and Prof. Benj. Silliman, Jr.

After graduating he commenced studying law at Lyme, with his father, who was then a judge of the Supreme Court of Errors, and concluded his law studies with Samuel M. Young, a prominent attorney of Maumee City.

In 1838, he settled in Maumee City, Ohio, and in 1839, on his admission to the bar, formed a partnership with his former preceptor, Mr. Young. This connection continued with special success until 1850.

In 1849, he was elected to represent the Maumee District in the Ohio Legislature. After the expiration of his term, in 1850, his firm opened an office in Toledo, of which Mr. Waite took charge, and he was soon acknowledged as one of the leading advocates and counselors in Northwestern Ohio. One who often met him as opposing counsel, said that "his opinion on any question of law was always accepted as indisputable."

In 1852, Mr. Young removed to Toledo and the firm of Young & Waite continued until Mr. Waite's youngest brother, Richard, came to Toledo, when the brothers entered into a partnership, which lasted until the senior partner's elevation to the Chief-Justiceship. During all these years, the firm had a very extensive practice.

Judge L. B. Otis, of this City, before whom Mr. Waite practiced during the seven years subsequent to his removal to Toledo, and who was, during that time Judge of the Toledo Court, says that the firm of Young & Waite was the leading law firm of the Maumee Valley, all the way from Fort Wayne to Toledo.

The following extracts are from a life of Chief-Justice Waite, published in Appleton's Annual for 1882, which has been pronounced by the family the most accurate of any sketch published up to that date:

"Politically a Whig, until the disbandment of that party; since that time he has been a Republican. An active and influential member of his party, he never became recognized as a party leader, the conservative tendency of his mind leading him in opposition to radical political measures. This was shown during the war, in his support of the policy of President Lincoln, rather than the more summary measures advocated by some of the anti-slavery leaders. But to all the war measures of the government he gave earnest and effective support, making himself especially useful in aiding the recruiting service of the army.

"In 1862, he ran as an Independent Republican in the Tenth Congressional District of Ohio; the call for the convention which nominated him being signed by Republicans and Democrats, who pledged themselves to "the maintenance of the government and the determined prosecution of the war; to the putting down of the rebellion, and the restoration of the Union." The regular Republican convention nominated James M. Ashley, and adopted a radical anti-slavery platform, demanding the confiscation of the property of the leading rebels, and other extreme measures. Edwin Phelps was brought out as the regular Democratic candidate. Ashley was elected by a plurality of 1,127 votes, although in an actual minority of 4,105. A seat upon the bench of the Supreme Court of Ohio was tendered to Mr. Waite by Governor Brough, but he declined it.

"His national reputation dated from his selection by President Grant, in November, 1871, as one of the three counsel to represent the United States before the Tribunal of Arbitration, at Geneva, Switzerland; his associates being William M. Evarts and Caleb Cushing. This appointment came to him unsought, he not even being aware that such a position was to be filled. He was in New York, closing up an important case, when the dispatch from the Secretary of State advising him of his appointment by the President reached him, being forwarded to him from Toledo. He immediately accepted this appointment, and left for his post of duty at Geneva early in the following month of December, where he performed the required service to

the entire satisfaction of the Government and the country.

[Before leaving on this important mission, Mr. Waite was given a banquet at the Oliver House by the leading citizens of Toledo of all parties. His argument in the Geneva case was regarded as a masterly production. It was not lengthy, but every word was freighted with ripe thought and it was greatly admired, especially by the legal profession. It was exhaustive and convincing and at once gave Mr. Waite an exalted position among the eminent lawyers of the country.]

"His already good reputation as an indefatigable and learned lawyer was greatly enhanced by the ability which characterized his labors in behalf of his country in this historical tribunal. His argument on the liability of the English government for permitting the Confederate steamer to take supplies of coal in its ports, was regarded as an effort displaying great logical power and comprehensive grasp of international questions. On September 17, 1872, the arbitrators rendered their decision that Great Britain had failed in her duties as a neutral, in the cases of Alabama, Florida, Shenandoah and their tenders, and awarded to the United States the sum of $15,000,000 in gold, which was promptly paid. He returned from Geneva in November, 1872, and resumed the practice of his profession in Toledo. In the same year the honorary degree of LL. D. was conferred upon him by his Alma Mater. In January, of the year 1873, he was, on the motion of Caleb Cushing, admitted to practice in the United States Supreme Court. In the following April he was nominated by both political parties and unanimously elected a delegate to the convention called to form a new constitution of the State of Ohio, and upon its assembling in May, he was chosen its president.

"The death of Chief-Justice Chase occurred May 7, 1873, creating a vacancy in the highest judicial office in the United States. After Attorney General George H. Williams and Caleb Cushing had been successfully nominated for the position and withdrawn, the President sent to the Senate the name of Morrison R. Waite, January 20, 1874. This appointment was also unsolicited by him; the Constitutional Convention over which he was then presiding being then in session, a member

advancing to offer congratulations, found him ignorant of the fact of his nomination. His appointment was received with approval throughout the country, being alike acceptable to the Senate, the bar and the people generally, irrespective of parties. He was confirmed as Chief-Justice by a vote which has seldom been equaled in its favorable character.

His commission was dated on the 21st of January, 1874. He took his seat on the Bench on the 4th of March, following.

The first opinion delivered by the Chief-Justice, was in the case of Tappan v. Merchant's National Bank, and it was somewhat remarkable that one of the counsel in that case was M. W. Fuller, who has been nominated to succeed Waite as Chief-Justice.

The question was whether shares of stock in a National Bank, belonging to a non-resident, could be lawfully taxed for State purposes in the County in which the bank was situated.

Chief-Justice Waite, after stating the question, and referring to the statute of Illinois, of 1867, under which the power to tax was claimed, said:

"The power of taxation by any State is limited to persons, property, or business within its jurisdiction. Personal property, in the absence of any law to the contrary, follows the person of the owner, and has its *situs* at his domicile. But, for the purposes of taxation, it may be separated from him, and he may be taxed on its account at the place where it is actually located. These are familiar principles, and have been often acted upon in this court and in the courts of Illinois. If the State has actual jurisdiction of the person of the owner, it operates directly upon him. If he is absent, and it has jurisdiction of his property, it operates upon him through his property."

After stating that shares of stock in National Banks were personal property, and had been made so in express terms by the act of Congress under which such banks had been organized, and that the State of Illinois had in 1867, the right to tax all the shareholders of National banks in that State on account of their shares, he then proceeded to consider at what place or places within the State such taxes could be assessed.

After a full discussion of this question, coming to the con-

clusion that the property may be assessed in the county in which it is situated, either actually, or as in case of bank stock, by construction of law, and drawing a parallel between bank stock and the interest of a partner in the partnership property, which it had never been doubted could be taxed at the place where the business of the partnership was carried on, he proceeded as follows:

"It is said to be a violation of the constitutional rule of uniformity to compel the owner of a bank share to submit to taxation for this part of his property at a place other than his residence, because other residents are taxed for their personal property where they reside. It is a sufficient answer to this proposition to say that all persons owning the same kind of property are taxed as he is taxed. Absolute equality in taxa- can never be attained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property." Instancing railroads, banks, partnerships, manufacturing associations, telegraph companies, &c.

"Again, it is said that the law in question destroys the uniformity of taxation, because it provides for the collection of the taxes assessed on account of this kind of property in an unusual way. The Constitution does not require uniformity in the manner of collection. Uniformity in the assessment is all that it demands. When assessed, the tax may be collected in the manner the law shall provide; and this may be varied to suit the necessities of each case."

The vigor and clearness, both of thought and style, exhibited in this and others of his opinions delivered at the first term of the Court at which the Chief-Justice presided, at once gave him a very high rank as a jurist, and removed any doubt which may have been entertained, of his ability to maintain himself in the exalted position which he had been called to occupy.

He has written many of the more important decisions of the Court. Among his more recent opinions are those delivered in the cases of Antoni v. Greenhow, Louisiana v. Jumel, and Elliott v. Wiltz, all of them involving important constitutional questions.

An associate justice of the Supreme Bench, now retired, says of him: "From the day of his entrance into office as Chief-Justice of the Supreme Court, he has been indefatigable in the discharge of its great duties, patient, industrious and able. His administrative ability is remarkable. None of his predecessors more steadily and wisely superintended the court, or more carefully observed all that is necessary to its working. Nothing under his administration has been neglected or overlooked."

Judge Waite was married September 21, 1840, to Amelia C. Warner, of Lyme, Connecticut.

He died suddenly of pneumonia, at Washington, on the 23d of March. The incidents connected with his death are fresh in the minds of his countrymen, who have not yet ceased to mourn the loss of an able jurist and an upright man.

In the Senate of the United States, on the 23d of March last, Mr. Edmunds, Senator from Vermont, speaking of the late Chief-Justice, said:

"For more than fourteen years, partly in times of great excitement and difficulty and struggle, and through a career in that court and out of it, embracing questions of the widest importance to human rights, both of life, liberty and property, the Chief-Justice has been the conspicuous figure in the jurisprudence of this Nation, and perhaps not less conspicuous in respect of the jurisprudence of the whole world.

"His career is ended—for this life. It has been touched in these fourteen years by no stain, by no reproach, by no fault or failing, either official or personal. Upright, brave, even-minded, impartial, patient, affectionate, kindly, as a citizen and in every walk of private life, he has filled his career with great honor to himself and with infinite benefit to his country.

The *Albany Law Journal* says:

"Chief-Justice Waite had a character and led a career upon which the biographer may well delight to dwell without reservation or concealment. So far as it is permitted to human nature, he was a spotless and perfectly admirable and balanced being, wise, and good, and kind. In his magisterial capacity he was distinguished by wisdom rather than by great technical learning."

The Canadian Law Times says:

"In the death of Chief-Justice Waite of the Supreme Court of the United States a severe loss has been sustained by that country, both in the person of the learned Judge and the vacation of the office.

"Personally, Chief-Justice Waite was said not to have been as learned or brilliant as some of his predecessors in office, but to have been possessed of a fund of sound wisdom, steadiness, and evenness of purpose. Where the functions to be exercised are not those of shaping or carrying into action a particular line of policy, but rather preserving in a proper balance not merely the principles of municipal law, but very grave and important constitutional rights, perhaps these qualities are to be preferred; and so, as a judge, he deserves to rank with men of more brilliant parts.

"In a country where party politics run upon lines which to some extent divide the people constitutionally, the opinions of prominent men are likely to be well-known; and as these matters come up for judicial investigation, it must always be a serious matter to change the Judges of a tribunal which finally settles them. So far the choice of Judges for that august tribunal has been wise, and the greatest confidence is felt that a sound discretion will be exercised in appointing a successor."

MELVILLE W. FULLER.

Melville Weston Fuller who has been nominated Chief-Justice of the Supreme Court of the United States, to succeed Chief-Justice Waite, deceased, was born at Augusta, Maine, February 11, 1833.

His father, grandfather, and great-grandfather had all been distinguished citizens of that town, their pedigree being traceable back to the pilgrims of the Mayflower. His grandfather upon his mother's side, Nathan Weston, was not only a lawyer of ability, but was also an eminent judge, having been one of the Supreme Judges of Maine, from 1820 to 1834 as associate justice, and from 1834 to 1841 as Chief-Justice.

His parents were Frederick A. Fuller, son of Henry W. Fuller, of Augusta, and Catharine Martin, daughter of Chief-Justice Weston. Melville W. fitted for college at Augusta, and graduated from Bowdoin College, in the class of 1853.

He entered the office of his uncle, George Melville Weston, at Bangor, where he studied law, subsequently attending lectures in the law department of Harvard University. In 1855, he commenced to practice law in Augusta, his native city, at the same time writing for "The Age" newspaper, of which he was one of the editors.

In 1856, he was elected to the common council of Augusta, and was chosen its president, at the same time performing the duties of city solicitor. The same year, though his prospects for the future in his native place were bright and alluring, he resigned his official positions, and came to Chicago.

In his new location he soon made many friends, and entered upon an extensive and lucrative practice.

His first case in the Supreme Court of Illinois, was Beach v. Derby, reported in 19th volume of Illinois Reports. Since that time he has had an extensive practice in the Supreme Court as well as in all the other courts, including the District, Circuit, and Supreme Court of the United States. His brief in the first case decided by Chief-Justice Waite, Tappan v. Merchant's National Bank, will be found in the 19th volume of Wallace.

The question was as to the power of the State to tax the stock of a National Bank owned by a non-resident of the State. The brief of Mr. Fuller is a model of clearness and force. The Court, partly on grounds of public policy, and falling in the wake of decided cases on analogous questions, sustained the power, the exercise of which Mr. Fuller was contesting.

As an original question, some of the points made by Mr. Fuller, would have been difficult to dispose of.

Extracts from the opinion of Chief-Justice Waite are given elsewhere in this number of "The Times." In giving the decision of the Court, he expressed his views with vigor and ability. His opinion had the advantage in that it voiced the law as it was to be, but it is not too much to say that the brief compares favorably with the opinion. It is seldom that Greek meets Greek more equally than those two met then; the new Chief-Justice and the comparatively young lawyer of the West.

One of the most celebrated cases in which Mr. Fuller has been engaged, was the Cheney case, in which Bishop Cheney was tried before an ecclesiastical council on a charge of canonical disobedience. Mr. Fuller was counsel for Bishop Cheney, and exhibited a knowledge of ecclesiastical law and a familiarity with the writings of the church fathers, quite surprising. He made a masterly argument in this case before the Supreme Court of the State.

His argument in the "Lake Front Case" lately decided by Judge Harlan, in which all our citizens took so much interest, was a very able one.

He has devoted himself to his profession, and has continued to grow in the knowledge of the law and in the confidence of his

clients, until, at the time of the nomination, if he did not stand at the head of the Chicago bar, it can be truly said that no one stood above him.

His manners are those of a perfect gentleman; dignified, yet affable, and always showing an appreciative regard for the rights of all with whom he comes in contact.

He has acquired a competency, and owns the block in which he has his office. From the time of his arrival in this City, he has maintained himself—has "held his own"—in the midst of a bar not inferior to any in the United States.

Another case in which Mr. Fuller was engaged, might be mentioned, that arising out of the prorogation by Governor Yates, of the Legislature of this State, a case presenting some very important questions, connected with the framework of our government.

He has always had a predilection for politics, and has been a zealous and consistent democrat. Still his highest ambition has been in the line of his profession. Hence, he has seldom been prevailed upon to accept office, though it has again and again been tendered him by his party, among whom he has ever been a great favorite.

The wife of Mr. Fuller is the daughter of the late eminent banker, W. F. Coolbaugh, and is a very accomplished lady.

Mr. Fuller always has his cases well prepared. He comes into court fully equipped, and ready for action. He is a pleasant and effective speaker, which, with his affable deportment, enables him to present his case to the best advantage.

He is a good writer, and has, in the midst of his professional duties, occasionally found time to contribute to magazines, and to the literary clubs of the City.

His nomination has been a gratification to the bar and to the citizens of his own State, without distinction of party.

HYDE PARK ANNEXATION.

The recent "annexation" case (Dolese et al. v. Pierce), argued at the January term of the Illinois Supreme Court. is one of unusual interest, as settling beyond further question one of the most important provisions of the constitution of 1870; viz:—that every act must express in its title the subject of the act. The wholesomeness of such a provision is at once apparent. In former years, acts were passed with titles as general and obscure as this: "An act concerning a subject therein named." The people of some locality would, after the legislature adjourned, discover that their rights had been interfered with, their boundaries changed, or the term of their officers extended. This provision of the constitution did not come any too soon.

The last general assembly passed an act, the title of which referred to nothing but township organization, and very few people in the State supposed it related to any other subject.

Suddenly a population of seventy thousand found themselves transferred to an adjoining city, under certain provisions in the body of the act.

In no just sense was the object of the act germane to the title, for townships need not necessarily have any reference to city boundaries. While in a very limited sense a township is a corporation, it may exist entirely in a city, as there are now three townships in the City of Chicago.

There is now in force a statute providing a method for annexing territory to a city or village, and the title is plain and clear; but the friends of the measure did not invoke the aid

of that law, nor did they seek by amendment to cure any of its defects. They sought rather to secure the object under a title relating to other matters, and which, to say the least, might be misleading.

After the decision of Dolese v. Pierce, considerable uncertainty existed as to the full effect of the decision, in its bearing upon the question whether the town (not Village) of Hyde Park had not still been annexed to the town of South Chicago. This doubt was fully removed by the subsequent decision in the case of The Village of Hyde Park against the City of Chicago, which we give in full:

SUPREME COURT OF ILLINOIS.

OPINION FILED MARCH 26, 1888.

THE VILLAGE OF HYDE PARK v. THE CITY OF CHICAGO.

Opinion in the Hyde Park Case.

PER CURIAM.—Stated in general terms, this was a bill filed by the Village of Hyde Park in the Superior Court of Cook County against the City of Chicago and others, to restrain the City from interfering with the property and effects of the Village, and from attempting to exercise municipal jurisdiction within the territorial boundaries of the latter, and for other purposes.

The Superior Court entered a decree dismissing the bill for want of equity. The complainant appealed to this court. The decree, for reasons stated in the case of Dolese et al. v. D. A. Pierce, decided at the present term of this court, will have to be reversed. Both cases in the main depend upon the same question, namely, the constitutionality of certain provisions of the amendatory act of 1887, relating to township organization, (Laws of 1887, page 300); for a full expression of our views on this question reference is made to the other case. There is a question in this case that does not arise in the other. Appellees insist that, conceding the facts to be as claimed by appellant, that the case is not one of equitable cognizance and that the decree should be affirmed on this ground.

We think otherwise. The property of the village is in the nature of a trust fund. It holds it for the use of the public, and any unlawful interference with it, calculated, as this would be, to inflict upon the community an irreparable injury in respect to it, presents a clear case for equitable relief: City of Peoria v. Johnston, 56 Ill. 52; Smith v. Bangs, 15 Ill. 399; People v. Whitcomb, 55 Ill. 172; McCord v. Pike et al., 121 Ill. 288.

It follows from the views expressed in the Dolese case that by the election referred to in the pleadings, none of the proposed territory in the town of Hyde Park became annexed to the town of South Chicago. We are of the opinion that any election heretofore held under the twelfth section of the amendatory act of 1887, would not only fail to extend the limits of a city so as to embrace all or a portion of an adjoining town proposed to be united to a town wholly within the limits of such city, but would also fail to unite such contiguous town, or any portion thereof, to the town so embraced within the city limits. In this case the part of the town of Hyde Park which it was attempted to annex to the town of South Chicago, was not so annexed by virtue of the election held in November, 1887.

The twelfth section of the amendatory act of 1887 provides that "where one of such towns is wholly within the limits of an incorporated city, the limits of that city shall extend to include both or all such towns." Any vote taken before the declaration of this court of the unconstitutionality of the provision here quoted for the annexation, under the act of 1887, of a town or a part of a town to another town lying wholly within the limits of an incorporated city, must be presumed to have been taken with reference to the provisons so declared to be unconstitutional. In other words, such election will be presumed to have been had with the purpose in view of extending the limits of the city over the territory annexed to the town wholly within the boundaries of such city. Hence, under the decision in the Dolese case, such election would be void for all purposes.

It cannot be held to have effected a union of the towns without extending the limits of the city over both of the towns. It cannot be held to have effected a union of part of a contig-

uous town to the town wholly within the city limits without extending such limits over the whole of the annexed territory.

While the obnoxious provision was a part of the act, and before its constitutionality was passed upon, the people voting under the act to annex a part of a town to a town wholly within the limits of a city, must have intended to vote for such annexation with a view of having the limits of the city extended over the annexed territory. The question of annexing two towns to each other, or part of one town to another town without reference to the extension of the limits of the city, could not have been presented to their suffrages. The people can not be declared to have voted for what they did not intend to vote on, and can not be held to have voted upon a question which was not in their minds at the time of the election.

In this case, the people did not vote upon the simple question of uniting a part of the town of Hyde Park to the town of South Chicago, therefore their vote did not have the effect of uniting a part of the town of Hyde Park to the town of South Chicago. They voted upon the question of uniting the Village of Hyde Park to the City of Chicago.

This abundantly appears from the pleadings, from the evidence, the arguments of counsel, from the language of the petition for the election, from the proceedings of the village trustees and of the board of county commissioners of Cook county.

The twelfth section of the amendatory act of 1887, provides for the union of one town to another, or of part of one town to another; it nowhere provides for uniting a village or a part of a village to a town. The petition to be presented to the county board is designated in the twelfth section as a petition for the union of towns, not of villages or cities, as a petition for disconnecting territory from one town, not from one village, and annexing the same to another town, not to a village or a city; and yet in the case at bar the petitioners describe themselves as residents of the "town or village of Hyde Park." They pray that the specified territory be disconnected "*from the town or village of Hyde Park* and annexed to the town of South Chicago."

The proceedings had by the board of commissioners of Cook County on October 3, 1887, speak of receiving a petition for disconnecting a portion of the "town or village of Hyde Park" and annexing it to the town of South Chicago, and the county clerk is directed to submit to the voters of the "town or village of Hyde Park" the question of annexation to South Chicago of a part of the "town or village of Hyde Park."

When the voters are thus called on to vote for the annexation of part of a town or part of a village, the question being submitted in an alternative form, and the vote for annexation and against annexation, how can the canvassing board say that they voted to annex the town rather than the village?

At a meeting of the trustees of the Village of Hyde Park, held on December 19, 1887, it was resolved that certain persons be "appointed a committee with power to act in the adjustment of any matter growing out of the proceedings for annexation between the Village of Hyde Park and the City of Chicago."

From all this and much more in the record that might be referred to, it is evident that the election was held under the provision which we have declared to be unconstitutional and with a view of effectuating the objects of that provision. Hence the election was void. The voice of the people is all powerful when expressed in pursuance of laws that are passed in obedience to the Constitution, but until the people vote to amend or change the Constitution in the mode which they themselves have designated, they, as well as their officials, are bound to obey its mandates.

The decree is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and Remanded.

LABOR, CAPITAL AND LAND.

The conflict between labor and capital has now assumed a phase which is not only disastrous to those engaged in it, but which threatens the perpetuity of our institutions.

Extensive combinations are made on both sides;—on the one hand to raise wages, on the other, not so much to lower wages directly but, which amounts substantially to the same thing, to raise the price of what the laborer must buy, thus decreasing the purchase power of wages.

The laboring classes have the political power, and the question as stated by Mr. Depew is, what will satisfy them? It might be better stated thus:—What ought to satisfy them? They are citizens and reasonable people. To assume that they are not reasonable, is to say that our institutions are already in ruins, and that it is only a question of time as to when that fact will be fully demonstrated. It is to say that a republican government is a failure;—that we made a mistake in basing our political institutions upon the principle of self-government.

The present unnappy conflict was stimulated and aggravated by the work of Henry George, entitled "Progress and Poverty." It is, upon the whole, a work of much intellectual power. It is well written, and its various fallacies, inconsistencies, and self-contradictions are so glossed over by glowing rhetoric and by the manifest earnestness and zeal with which the author pursues his subject, that they sometimes at first escape detection, even by the thoughtful reader.

Moreover, it is a direct appeal to the laboring man. While the writer does not undertake professedly to point out antagonisms between capital and labor, while he ignores such antagonisms, and even denies their existence, attributing all the evils of poverty to the system of land ownership, still, it is in reality, an appeal to the laborer to assert his rights against the capitalist.

Nor is George at all particular as to the manner in which the laborer should assert his rights. He professes to discountenance strikes. But does he countenance strikes or something worse, when he prefixes to one of his chapters the following lines taken from an old play?

> "Why hesitate? Ye are full bearded men,
> With God-implanted will, and courage if
> Ye dare but show it. Never yet was will
> But found some way or means to work it out,
> Nor e'er did Fortune frown on him who dared.
> Shall we in presence of this grievous wrong,
> In this supremest moment of all time,
> Stand trembling, cowering, when with one bold stroke
> These groaning millions might be ever free?
> And that one stroke so just, so greatly good,
> So level with the happiness of man
> That all the angels will applaud the deed?"
>
> (Progress and Poverty, p. 356.)

The effect of the book, which has had a wide circulation, has been, and such must be presumed to have been Mr. George's intention, to make the laborer believe that the capitalist is his enemy—that there is under the present conditions of society, an irrepressible conflict between labor and capital. The corollary to this proposition is very quickly drawn by the laborer himself. That is, that whatever he can wrest from the capitalist by whatever method, is so much rescued of that of which he and other laborers have been despoiled. It is so much of restitution from the "robbery" of which Mr. George speaks so freely. And the means by which the restitution is brought about are not to be too closely questioned.

Now, what is needed is, to satisfy the laborer that he has been deceived and misled;—that there is no such necessary an-

tagonism. That though our form of society is by no means perfect, yet its imperfections are not so great as to forbid a harmonious co-operation between capital and labor, to the advantage and improvement of both. Their interests are in harmony. It is for the true interest of the capitalist to give the laborer fair wages—his fair portion of the product of his labor.

As a general rule, the laborer has no cause to complain in regard to wages, which, as shown by the statistician Mulhall, have been gradually increasing for a series of years.

He shows that since 1850, the rise in wages in all Europe has been from 40 to 50 per cent, and in the United States 44 per cent, while prices of necessaries have fallen in the meantime an average of 10 per cent.

The wages of a day laborer have risen in England from 32 cents in 1835 to 56 cents in 1884; in France in the same time from 30 to 50 cents; in Germany from 16 to 36 cents; in Russia 12 to 24 cents; in Belgium and Holland from 19 to 40 cents; in Italy from 10 to 24 cents; in Austria from 20 to 40 cents. The wages of artisans in England have risen from a little over 82 cents a day in 1840 to $1.26 in 1884, and in France from 50 cents in 1850 to 70 cents in 1880. In the United States the average earnings of operatives have risen from 80 and 96 cents a day in 1860 to $1.14 a day in 1880. Since 1880, the rate of increase has been even greater.

This is simply conceding to the laborer his share of the net increase of capital created by labor itself, and by labor-saving machinery. As prices are high when money is abundant, there being but so much to sell and more money to buy it with, so should wages be high when capital is abundant, there being but so much labor and more capital for its remuneration.

It would be difficult to believe, if we had not the evidence before us in Mr. George's book, that any sane man would deny and undertake to controvert this natural and healthy relation between labor and capital, as it has been stated and elucidated by all the great writers on political economy previous to Henry George.

The errors and fallacies of George's book ought to be pointed out in plainer and simpler language than has yet been done

by any of his reviewers, all of whom have either failed to go to the bottom of the matter, or, when they have done so, they have been too intent upon castigating Mr. George.

Some one is needed to do for the laborer of this country, what Bastiat did for the proletariat of France when he demonstrated so plainly that a child could not fail to understand it, that it was right that interest should be paid for the use of capital. The fallacies by which the workingmen of Paris had been deceived on this question, by such writers as Prudhon and Thoré, and by such journals as the *Moniteur Industriel*, and *La Ruche Populaire*, were so plainly exposed by Bastiat, that not one of his readers could fail to see them, or to be prepared to explain them to others.

George's fallacies could be made equally plain. For instance, one of his fundamental propositions—one with which he starts out, and which he keeps prominent all the way through his book, is, that wages are not drawn from capital, but from the direct proceeds of the labor itself; in other words that the laborer pays himself.

In order to maintain his proposition, he constructs a new definition of the term "capital." Discarding the standard definition of the word, given by writers on political economy, to wit, that portion of wealth which is used in the production of more wealth, under which the payment of wages is one of the legitimate uses of capital, George frames a new definition, thus:

"Capital is wealth in the course of exchange."

That portion of wealth which is advanced to the laborer, before the products of his labor are sold and converted into money, is not "wealth in the course of exchange;" hence, under the new definition, is not capital. Thus it is he proves that wages are not drawn from capital. Of course if a writer can make his own definitions, and new ones at that, he can prove any proposition whatever.

In this case, however, Mr. George rather overdid the matter. For while the negative part of his proposition, that wages are not drawn from capital, is thus proven by his new definition, when we come to the positive part of his proposition, showing

how wages are paid, to wit, from the products of the labor itself, the new definition comes back to plague its inventor in the mind of the observant reader. For the products of labor, before they can replace the wages, have to be sold and converted into money. By this very process they become wealth in the course of exchange; hence, by the new definition, capital; hence, wages are drawn from capital, under his own definition.

What makes the matter worse is, that George, forgetting his new definition, or undervaluing it after it has served his purpose, in other portions of his book discards it, and falls back upon the one approved by the standard authorities.

Before introducing his new definition, he had, on p. 41, defined capital as "the portion of wealth which is devoted to production."

And so, also, after the new definition has been put forth, and made to do its work of overthrowing the old system of political economy in its treatment of the question of wages, on p. 145, he falls back again upon the old definition, as follows:

"Capital is all wealth used to produce more wealth." Thus placing himself in accord with the standard writers, Adam Smith, John Stewart Mill, Ricardo and others, whose theory in regard to wages, he had, by aid of his new definition, just overthrown.

Not only does he admit the standard definition of capital to be correct, but he concedes in some places, inadvertently, perhaps, the very proposition which he devotes so much space to combating, to wit, that wages are drawn from capital.

Thus, he says on p. 46:

"The utmost that can with any plausibility be affirmed is, that some wages (i. e. wages received by the laborer from an employer), are drawn from capital." But query, what other wages are there? Webster defines "wages" as follows:

"A compensation given to a hired person for his or her services."

Determined to maintain his proposition, George, having already given a new definition to capital, now gives a new definition to wages. Under his facile pen wages become synonymous

with earnings, and these again with any kind of gettings; so that if a savage digs roots for food, the roots are his wages.

But this is not all. On p. 146, he substantially concedes that there is nothing in the issue which he has been trying to get up with the standard writers, "the great thinkers," as to the source from which the laborer gets his wages. He says:

"In all politico-economic works we are told that the three factors in production are land, labor and capital, and that the whole produce is primarily distributed into three corresponding parts. Three terms therefore, are needed, each of which shall clearly express one of these parts to the exclusion of the others. Rent, as defined, clearly enough expresses the first of these parts—that which goes to the owners of land. Wages, as defined, clearly enough expresses the second—that part which constitutes the return to labor. But as to the third term—that which should express the return to capital—there is in the standard works, a most puzzling ambiguity and confusion."

Here it is distinctly admitted that in all standard politico-economic works, wages "as defined," clearly enough expresses that part of the produce "which constitutes the return to labor." What then becomes of the issue? This very definition of wages is the one which George has been claiming as his own. Or at least, as one of his own, for he has two. In case of the root digger he gets all the produce, and still it is wages.

He has all along been claiming that the standard writers wrongfully assert that wages are drawn from capital. He asserts that they are not drawn from capital, but, and this is the issue, that they merely consist of that part of the produce which the laborer draws backs from the product of his labor; in other words, that part of the produce which constitutes the return to labor. And here he admits that all the standard writers state precisely the same thing.

There is one sense in which the laborer may be said to pay himself; in those cases where the wealth which the laborer produces is used as new capital, and the wages are paid or replaced from the proceeds.

George, taking this view of the matter—looking upon capital as continuous and wages as continuous, thought to make a short cut and to solve at once the problem as to the relations between capital and labor, by asserting that wages are not drawn from capital, inasmuch as they more than keep it good.

But the trouble with his theory is, that it is based upon the assumption that the wealth produced by labor in any given case will be expended for other labor or exchanged for other wealth. This may or may not be the case. If not, then it is not capital, being wealth which is not used to procure more wealth. In that case, the pre-existing capital which had been paid out in wages, has been paid not only temporarily but permanently; and in all such cases George's theory, even in the sense in which he understands it, falls to the ground.

George's treatment of the Malthusian theory is not much better. The theory of Malthus, that the growth of population has a tendency to press upon the means of subsistence, and thus to decrease wages, George denies entirely, and claims to have overthrown. But all his arguments are directed to showing that up to this time, the evils of destitution and poverty have not been caused by a pressure of population upon means of subsistence, but may all be accounted for by other causes. But this does not disprove such a tendency. It shows only that it has been thus far counteracted by other causes;—by wars, famine, and pestilence, and especially by the discovery and opening up to cultivation and improvement, of new countries vast in extent and in productive capacity.

This on the supposition that his arguments are valid. But when applied to the older countries of Europe, and especially in the case of Ireland, so far from being valid, they are exceedingly fallacious.

The absenteeism of Ireland is set down as one of the principal causes of the destitution in that country, and no doubt it is a crying evil. But there has been an actual pressure of population upon the means of subsistence. And suppose better conditions had prevailed. Suppose all the land in Ireland had gone into the possession of the people in small holdings, or even in small parcels in fee simple, and at the same time all the population which has overflowed to this and other countries, had remained; how long would it have taken for the increase of population to press upon the means of subsistence?

The Malthusian doctrine is based upon three facts. First, that a large proportion of the population must ever be engaged

in the cultivation or improvement of land; second, that the quantity of land in every country and on the entire earth, is limited; and third, the natural increase of population is unlimited. George cannot eliminate any one of these facts; therefore he cannot overthrow the Malthusian theory. To what extent that theory is to be resorted to in explanation of existing evils, is another question. Some writers may place too much stress upon it, and George, too little; and this is probably the true state of the case.

There is a point that George might have made, but did not. He might have struck a powerful blow at our landed system, by attacking the principle of ownership, involving speculation, in vacant land. But here again he attempted too much, by attacking not only ownership of vacant land, but all ownership of land. Such an attack has no just foundation, and hence can never be successful.

There is in nature a just foundation of ownership of improved land, or which amounts to the same thing, the right of the possessor, his heirs or assigns, to retain the continued possession of it indefinitely, which is all that is meant by ownership when applied to this species of property.

George says land is not a subject of ownership because it is an element of nature. But it is no more an element of nature than the growing tree. When the tree has been felled, sawed up into boards, and from one of the boards a jack-plane is constructed, George admits that the maker of the plane has a right to it against the world, because it is the product of his labor. But it is not the exclusive product of his labor. It is the result of the labor of himself and others expended upon an element of nature, to wit, the tree. Now if a man, having possession of land, cultivates or improves it, so as to produce something from it which is as much wealth as the plane, then his labor has been expended upon and becomes incorporated with the land, as really as is the case with the tree. The tree has been severed and removed, it is true, while the land has not, but that does not alter the case. Each has become subject to the sort of possession to which it is susceptible and in both cases the possession is exclusive.

Again, if we go back to first principles, and take society in its rudest stages, he who first acquired exclusive possession of any element or product of nature, thus acquired a right to it against others. This is so laid down by all the writers on the law of nature, and the principle is illustrated by the familiar case of the savage who first obtains possession of the shade of a tree, on a hot, sultry day.

But when we come to treat of vacant land, the case is entirely different. *

The time has come when the principles upon which our landed system is based, should be carefully examined from the foundations, and if the foundations are wrong, reforms should be instituted and carried forward, so far as the same can be done without interfering with vested rights.

The time has come when an attempt should be made to remedy such defects in our social structure, as may rightfully be made cause of complaint.

An idea is pervading the masses that there is something wrong, and they are striking like a strong man in the dark.

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* NOTE. Many years ago the writer of this wrote a series of articles on "Land Reform," which were published at the time in the Chicago Tribune, in which he took the ground that there was not in nature any real foundation for private ownership of vacant and unoccupied land, and maintaining that the wild lands of this country could rightfully only be held by the government in trust for actual occupants. He has never seen reason to change the views then expressed.

Such views have also been sanctioned by eminent writers on political economy.

John Stuart Mill, after stating clearly the foundation for private ownership of land, says:

"These are the reasons which form the justification, in an economical point of view, of property in land. It is seen that they are only valid in so far as the proprietor of land is its improver. Whenever, in any country, the proprietor, generally speaking, ceases to be the improver, political economy has nothing to say in defense of landed property as there established. In no sound theory of private property was it ever contemplated that the proprietor of land, should be merely a sinecurist quartered on it." —(Principles of Political Economy, p. 243.)

And again:

"When land is not intended to be cultivated, no good reason can in general be given for its being private property at all."—(Ibid. p. 298.)

Let us show them that we are willing to inaugurate such reforms as are based upon correct principles, and such as can be carried out without violent or radical changes.

Let all unoccupied lands now claimed by the government be held for occupants only, and no other entries be permitted.

Let no more lands be granted to railroads, except the right of way, and none to other corporations on any pretense whatever.

Let the amount which can be held by devise or descent be limited by legislative enactment.—This policy has already been advocated in the Times.—[See an article in the April number, 1887, by Hon. H. B. Hurd, Professor in the Union College of Law, consisting of the Report of the Special Committee of the Illinois State Bar Association, on the advisability of amending the statutes of descent and of wills so as to limit the amount any one person can inherit or take by will from the same decedent.]

These reforms should be instituted at once, and others so fast as their utility and feasibility become apparent.

It will not do to say there is no cause for dissatisfaction. That may be our side of the question. But we must look upon both sides. It is claimed that there is cause; and many believe that society is wrongfully constituted;—so much so as to require radical, if not revolutionary measures.

The present struggle cannot be continued indefinitely without endangering, not only our institutions but our form of civilization. There must be a readjustment or a reconciliation before it is too late.

Charles B. Waite.

LAW REFORM IN PLEADING AND PRACTICE IN CIVIL CASES.

Several of the judges of the Supetior Court of Cook County haved passed rules of court to the following effect: "That in all cases heard in this Court, the parties shall prepare an abstract or abridgment of their respective pleadings, and of the evidence when the same shall have been taken by deposition or before a master in chancery, and such abstract of the pleadings and evidence shall be read on the hearing in lieu of the original pleadings and depositions."

This will be found a very useful practice, especially in chancery suits, where the pleadings are usually more special than in suits at law. It is however, only an adaptation of what has been the course adopted for some quarter of a century past in other states and provinces.

Nothing could be more pernicious and troublesome than the custom that has prevailed here of allowing practitioners to take original pleadings from the files of the court when they might have occasion to use them. It led to constant trouble and confusion and not unfrequently to the loss of the records of the court.

In those courts where a different system prevails, the files are never permitted to be taken from the custody of the clerk, and if the original records are required, an "office copy" stamped by the clerk is used and has the same force and effect as the original. A mode similar to that to be inaugurated by the above rule prevails as to briefs. A brief or "abstract or abridgment

of the pleading and of the evidence" is prepared, each party including in it such portion of the evidence as he thinks fit to read in support of his case. These portions are referred to as having been read in the decree and are identified by the numbered folios in the "office copy" of the evidence. These briefs of counsel are, in important cases, generally left with the clerk to insure correction as to the evidence read.

The reading of the brief instead of the filed pleadings will be an improvement upon our past system, but will not do away with reference to the original files, for the abstracts may differ, and occasionally omit what an opponent may contend it should contain, especially if the old-fashioned verbiage still used in chancery pleadings is retained. The old-fashioned chancery bill in nine parts, is out of date. 'Orators and oratrixes' who 'combine and confederate' and desire to charge unknown defendants with 'apt words,' should be allowed to sleep the sleep of oblivion in company with John Doe and Richard Roe.

Whilst these orders are, as we admit them to be, a step in the right direction, a far more radical change is necessary before we can keep pace with our neighbors in abolishing obsolete forms and establishing a uniform practice, simple, certain and precise in its operation.

As a foundation for such a change, the principles which govern the not unimportant matter of costs, should be altogether changed. Whatever may be the case at common law, it cannot fairly be disputed that in equity the party in the wrong, he who creates the necessity of litigation, should be subjected to the burden of costs; so he who introduces untenable, insufficient, dilatory or unsustainable pleas of any kind, should bear the costs of their being set aside or disallowed. If such were the rule a much greater certainty in pleading would be arrived at, suits would get to issue without such tedious delay and the oft recurring amendment would not be asked for if the party seeking it had to pay the costs on demurrer or upon obtaining leave to amend.

That the unsuccessful litigant should pay the costs of the suit, seems only consistent with natural justice, and is so admitted to be where a judgment 'carries costs' as is the case

in most communities where the law is drawn from the same sources as that here.

The attorney's fees, to a reasonable amount, ought to be charged to the losing party as costs. The writer is aware that certain objections have been made to the change now advocated, one being that it would increase the cost of litigation and another, often urged, that it would encourage champerty, leading to suits by impecunious suitors against alleged debtors of means, to whom the attorneys would look for costs. We do not think these objections tenable. The costs are not increased, the services performed alone are paid for at a regular, definite rate and would not exceed the amount now usually jumped at or guessed, while the champerty acts are a sufficient protection against speculative suits.

An idea prevails that it would be expensive to carry out the plan suggested. The expense would be far less than many suppose. A taxing office would not be required by each judge but one to each court would be found sufficient; these would be self-sustaining. The fees on taxation and otherwise would afford ample remuneration. With a tariff once established, it is wonderful how quickly the work of taxation is accomplished. The fees to the taxing master would be paid in the first instance by the party whose bill is taxed, and afterward be charged to the one who rightfully should pay them.

Some who take an interest in the establishment of a reformed practice advocate a codification of the laws as in New York and other States; others think that many useful changes could be brought about without the establishment at present, at any rate, of a code, which would be attended with great labor and expense and require much time and also legislative action.

The existing courts have power to regulate the practice in their respective courts, and the establishment of a definite rate or tariff of attorney's fees might be supposed to be within the scope of this power. If this is the case, and with a view of testing the scheme, let it be adopted and applied at first to chancery suits only.

If the present staff of clerks is not sufficient, appoint one

efficient clerk and give him the fees payable for his own services. The fees in other similar offices are $1 an hour whilst employed in taxation; then there are filing certificates &c. which would average, say $10 a day in all, or $60 a week, which would make a reasonable salary, for what would be but routine work. If the plan worked, and it works well in other places, then the staff of clerks could be increased and these matters of detail arranged.

At the same time that the rules for a tariff were framed, other orders might be passed abolishing the old-fashioned phraseology of bills and other pleading without interfering with the necessary certainty of pleading.

If however, it is absolutely necessary that the Legislature of the State should invest the judges with the necessary power to pass and carry into effect such rules of court as are suggested, a very brief act would be all that would be necessary for that purpose, which of course is very different from preparing a code. That would not prevent the adoption of a code at some future time. To give to the judges power to decide that the defeated litigant should pay the costs and attorney's fees of his opponent would perhaps make necessary such an act. It would be a very just and proper measure and be alike beneficial to suitors and attorneys.

C. W. Cooper.

MR. JUSTICE MILLER ON JURY TRIAL.

Mr. Justice Miller, of the United States Supreme Court, has contributed to the *American Law Review* an article upon the system of trial by jury, from which we give some extracts below. "The experience of this learned judge," says the Montreal Legal News, "supports the opinions which have been expressed on the same subject by eminent members of our own bench. The topic came up at a recent gathering of the Ohio State Bar Association. Judge Harris, one of the speakers, believed that the jury was an indispensable agency in judicial administration, though he admitted that sometimes jurors were encountered who had peculiar notions of justice. He related an incident of a Bohemian oats case in which the bench instructed the jury to the effect that a farmer who signed a note for $160, in payment for oats, was legally bound to pay it, but that if the holder was guilty of swindling the farmer, the note could not be collected. The jury returned a verdict for $80 in favor of the agent for the oats, because the foreman of the jury was once swindled himself in the same way, and had settled for fifty cents on the dollar, and he persuaded his associates that such a settlement was about right."

"I must confess" says Justice Miller, "that my practice in the courts, before I came to the bench, had left upon my mind the impression that as regards contests in the courts in civil suits, the jury system was one of doubtful utility; and if I had then been called upon, as a legislator to provide for a system of trial in that class of actions, I should have preferred a court constituted of three or more judges, so selected from different parts of the district or circuit in which they presided as to prevent, so far as possible, any preconcerted action or agreement of interest or opinion, to decide all the questions of law and fact in the case, rather than the present jury system. * * *

This impression upon me, growing out of my practice, I have since come to think, however, was largely due to the fact that, owing to popular and frequent elections of the State judges, and insufficient salaries, the judges of those courts in which I mainly practised were neither very competent as to their learning, nor sufficiently assured of their position, to exercise that control over the proceedings in a jury case, and especially in instructing the jury upon the law applicable to it, which is essential to a right result in a jury trial. It may as well be stated here that a case submitted to the unregulated discretion of a jury, without that careful discrimination between matters of fact and matters of law, which it is the duty of the court to lay before them, is but little better than a popular trial before a town meeting. * * * An experience of twenty-five years on the bench, and an observation during that time of cases which come from all the courts of the United States to the Supreme Court for review, as well as of cases tried before me at nisi prius, have satisfied me that when the principles above stated, (principles upon which judges should instruct). are faithfully applied by the court in a jury trial, and the jury is a fair one, as a method of ascertaining the truth in regard to disputed questions of fact, a jury is in the main as valuable as an equal number of judges would be, or any less number.

In my experience in the conference room of the Supreme Court of the United States, which consists of nine judges, I have been surprised to find how readily those judges come to an agreement upon questions of law, and how often they disagree in regard to questions of fact which apparently are as clear as the law. * * * I am therefore of opinion that the system of trial by jury would be much more valuable, much shorn of many of its evils, and much more entitled to the confidence of the public as well as of the legal and judicial minds of the country, if some number less than the whole should be authorized to render a verdict. I would not myself be willing that a bare majority should be permitted to do this.

There could be little difference in the confidence which would be reposed by the court, the public, or the parties, in the opinion of five men or of seven. It should be something more, then, than a bare majority. If the jury is to consist of twelve men, I certainly would not be willing that its verdict should represent less than eight, which is two thirds, or probably nine, which is three fourths. Many of what are called mistrials, produced by a failure of the jury to render a verdict, would be avoided if the power were given to nine or eight to render a verdict instead of requiring them all to unite in it, and such a verdict would be entitled to as much confidence as if it were unanimous. In respect to civil actions, where the question at issue is the right to specific property, or to damages for failure to fulfil a contract, or torts against the person or property of the plaintiff, this approach to perfect justice is perhaps as near as the fallibility of human nature permits, and the change removes the most serious objection to the system of trial by jury, the one which stands out as almost without support in reason or experience."—(American Law Review.)

SUFFRAGE IN WASHINGTON TERRITORY.

The suffrage law passed by the legislature of 1887–88 places females upon an equality with males, and provides that adult citizens and adults who had declared their intention to become citizens, having a residence of six months in the territory, sixty days in the county, and thirty days in the precinct next preceding the day of election, shall be entitled to vote. This statute was opposed on the following grounds:

1. That women ought not to take part in elections.

2. That the legislature had no power to abolish sex as a qualification for voting until the matter had been submitted to the people.

3. That the legislature had no power to recognize women as qualified voters, because in the Organic Act the word "citizens," in defining the qualification of voters, was used in the sense of male citizens only, and the legislature cannot give it a broader meaning than it had in the Organic Act.

The opponents of suffrage by these objections attempted to prevent the enfranchisement of woman. The first objection was not seriously urged. The second objection, that the legislature lacked power to pass such a statute without direct authority from the people, is effectually disposed of by the decision of the Supreme Court of this territory in the Local Option Case, Thornton v. the Territory, where the court held that the legislature cannot delegate its law-making power to the voters.

The third point, as to citizenship, was gravely urged in each house by attorneys at law from each of the two great political parties, and was also argued before the Supreme Court of the Territory by an attorney who seized an opportunity to obtain a decision in advance nullifying the law. The point was made that women were not citizens within the meaning of the first section of the Fourteenth Amendment; and, therefore, the territorial legislature had not the power to confer upon women the elective franchise. The court listened to the argument and disposed of it in their opinion as filed, by saying: "The point is made in the brief of counsel that the territorial legislature have not the power to confer upon women the elective franchise; that question, however, is not necessarily involved in the matter before us, and hence we do not feel called upon to pass upon it."

Sec. 1860, Rev. St. U. S., confers upon the legislative assembly power to regulate the qualifications of voters subject to certain restrictions which, essentially, based the right to vote on citizenship, adult age and residence. It does not term voting a privilege, but a "right of suffrage." The power to regulate it is the same as to male and female citizens. If the legislative assembly has power to disfranchise female citizens it can disfranchise male citizens. Congress has not disapproved any act passed by the legislature of the territory which has removed the civil or political disabilities of woman.

The early legislation in reference to this territory was favorable to women.

Sec. 4 of the Donation Act of September 27th, 1850, granted lands to every white settler above the age of eighteen years, etc., giving a half section to a single man and a whole section to a married man, one half to be held by the wife, in her own right. Under this law, it was held that an unmarried woman was included in the term "single man." See Silver v. Ladd, 7 Wall. 225, where it was held that the restrictive words "single man" are "capable of being construed generically so as to include both sexes," and that in the fifth section the words male citizens are used to express a limitation as to sex. The same principle applies to the right of suffrage in the Organic

Act. The right of suffrage is conferred on female citizens as well as upon male citizens.

Jan. 25, 1855, the legislature defined the qualification of voters: "that all white American citizens above the age of twenty-one years," etc. shall be entitled to vote. This abolished sex as a qualification required of citizens in voting; but it confined the right of suffrage of persons, who had declared their intention to become citizens, to white males.—(Laws of 1855, p. 7.)

The school law of 1854, (Laws of 1854, p. 325), provided that every white inhabitant over the age of twenty-one years, resident in the district three months, and a taxable inhabitant, except for road tax, "shall be a legal voter at any school meeting, and no other person shall be allowed to vote."

The word "white" was stricken out by the act of Congress of Jan. 25, 1867, which annulled all parts of acts denying to any citizen the right to vote on account of color, race or previous condition of servitude.—(U. S. Statutes at Large, Vol. 14 p. 379.)

The school law of 1877 omits the word "white" in the qualifications of voters; and inserts after the words "every inhabitant," the words "male or female," and requires any person challenged to swear that the voter is a "citizen of the United States, or has declared an intention to become such;" thus excluding all taxable inhabitants who have taken no steps to become citizens.

Sec. 3188 of the Code of 1881 in regard to school elections embodies the same provisions.

Sex was not a disqualification for voting at school elections. Nor was it a disqualification in regard to consent for liquor licenses. The Act of Jan. 28, 1857, (Laws of 1857, p. 31), required applicants for license to sell intoxicating liquors to present to the county commissioners "a petition praying such grant, signed by a majority of all the adult white inhabitants of the election precinct wherein such grocery is to be located."

The same provision is in the laws of 1864, p. 42. In the laws of 1871, p. 59, the word "white" is stricken out, requir-

ing a majority of adult inhabitants of the precinct to be signed to a petition for liquor saloon licenses.

The restriction of the right to vote to "male" citizens as provided in sec. 3050 of the Code of 1881, was a departure from the previous statutory law of the territory, as well as from the Organic Act. The laws of 1883 and 1886, in regard to suffrage for all adult citizens, were intended to, and were supposed to, repeal the disfranchising provision in the Code of 1881, contained in section 3050. If the titles of the acts relating to section 3050 of the Code are invalid, it is because they do not add "relating to elections," to the title, simply purporting to amend sec. 3050 of the Code.

The Act of Feb. 3, 1886, entitled "An Act to amend sections 3079 and 3084 of chapter 242 of the Code of Washington Territory relating to elections," (Laws of 1886 p. 128), is as valid as "An Act to amend chapter CLV of the Code of Washington Territory, entitled 'Courts.' "—(Laws of 1886, p. 54.)

Under the rulings of Justices Langford and Turner, that the reference to the Code is meaningless, and expresses no subject, then such part of the title is surplusage, and should be stricken out. The title of the last act then, is "An Act." The title of the election law is "An Act relating to elections." Under this perfect title it was competent for the legislature to amend any act in conflict therewith.

The election law of 1881 was entitled "An Act relating to elections and the mode of supplying vacancies."

The act of 1886 provided for receiving the votes of female voters and in section 2 provided: "Words used in this act, and the act hereby amended, indicating persons of the masculine gender, shall be construed to include persons of the feminine gender."

This refers not only to the sections of the Code amended but to the Act of 1881, "relating to elections." Sec. 3 repeals "all acts and parts of acts in conflict with this act."

This title is valid, beyond question, and so is the entire act.

The Legislature of Nebraska passed an act entitled "An Act to amend an Act to incorporate cities of the second class,

and to define their powers, approved March 1, 1871, and to legalize certain taxes therein mentioned." The Supreme Court of Nebraska held that the third section of the act which legalized the illegal collection of license money, was void, because "it is in nowise amendatory of the general incorporation law of cities of the second class, nor does it make any allusion to the legalization of any taxes whatever." And of the entire act it said: "But we fail to discover wherein it is in any particular amendatory of the general act relating to cities of the second class."

The Supreme Court of the United States in Read v. Plattsmouth, 107 U. S. 579, concurred in these adjudications, and held:

"The act, therefore, may be considered as if its title were simply that of "an act to legalize certain taxes therein mentioned.'" Also that as the second section did legalize certain taxes, the act was as to that subject valid, the court rejecting as surplusage that portion of the title referring to cities of the second class.

Applying that rule to this case, the title of the Act of Feb. 3, 1886, is, under the Harland decision, to be construed as "An Act relating to elections." As such, it is the latest act of the legislature on that subject, and by section 3 repeals all acts and parts of acts in conflict.

Section two construes all words in the "act relating to elections," of 1887, which indicate males as including females, and thus amends section 1 of that act, so that sex is no cause for disfranchisement of voters.

"The repeal of a statute on a given subject it is held, is properly connected with the subject-matter of a new statute on the same subject, and therefore a repealing section in the new statute is valid, notwithstanding the title is silent on that subject."—(Cooley on Const. Limitations, 5th edition, p. 175.)

The same rule was held in Mix v. Ill. Central R. R. Co., 6 N. E. Reporter, 44, where the court held: "The Constitution does not require that all the legal effects of an act, such as repeals by implication should be expressed in the title. Such a thing would be utterly impracticable. Where the act itself

is clearly embraced in the title, as is the case here, all legal consequences flowing from it will for the purposes of this constitutional requirement be regarded as embraced within the title also."—(Timm v. Harrison, 109 Ill. 593.)

In 1858, the legislature passed "An Act in relation to the Construction of Statutes, (Laws of 1857, p. 45), which provided "That in any law of this territory now in force or hereafter to be enacted, every term implying one only, shall, when required, be construed to mean two or more, * * * except in cases where the number is a substantive part of the act; and every term implying sex, shall, with a like exception, when necessary, be construed to mean, both, either or neither."

Under this law no statute could be held to exclude women where it referred to citizens.

The Act of Nov. 14, 1879, "To establish and protect the rights of married women," abolished the civil disabilities of the wife, but provided "That this shall not confer the right to vote or hold office upon the wife, except as is otherwise provided by law."

It did not enfranchise or disfranchise her.

The so-called common law rule had been abrogated long before. In 1861, the civil practice act of Jan. 30, 1861, provided:

"A married woman may sue and be sued, plead and be impleaded, without joining or having her husband joined with her in the action."—(Laws of 1861, p. 51.)

The exemption law of the same date provided:

"That all real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall hereafter become entitled in her own right, and all her personal earnings, and all the issues, rents and profits of such real estate, shall not be liable to attachment for, or execution upon any liability or judgment against the husband so long as she or any minor heir of her body shall be living."—(Laws of 1861, p. 53.)

The disability of coverture was recognized in sec. 11 of the limitation act of 1860, p. 29, Laws of 1860. This was repealed

Jan. 31, 1861, by striking out the words "a married woman." —(Laws of 1861, p. 61.)

If the so-called rule of the common law, of the theoretical unity of husband and wife, had existed prior to 1861, these laws abrogated it.

In the Code of 1881, the word "male" was inserted in the election law before the word "citizens."—(Sec. 3050, Code.)

This amendment of the election law was arbitrary, and in violation of the right of suffrage recognized by the Organic Act as belonging to citizenship. No such power of disfranchisement on account of sex was conferred by Congress on the legislature. There must be a clear delegation of power on the part of Congress to authorize the territorial legislature to deprive any citizen of a right belonging to citizenship.

"The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of these rights for past conduct, is punishment, and can be in no otherwise defined.

"Punishment not being therefore, restricted to the deprivation of life, liberty or property, but also embracing deprivation or suspension of political or civil rights, and the disabilities prescribed by the Missouri constitution being in effect punishment, we proceed to consider whether there is any inhibition in the constitution of the United States against their enforcement."

The Court then pass to the constitutional prohibition that "No State shall pass any bill of attainder" and held: "A bill of attainder is a legislative act which inflicts punishment without a judicial trial."—(Cummings v. State of Missouri, 4 Wall. 323.)

In regard to territorial legislation Congress is bound by the limitations of the constitution, which provides in section 9: "No bill of attainder or *ex post facto* law can be passed."—(Sec. 9, Art. 1 of the Constitution.)

Congress could not, constitutionally, make sex a crime, and authorize the disfranchisement of adult female citizens. Nor can the legislature of this territory usurp a power denied to Congress, and prohibit any class of citizens from voting. The Organic Act recognizes the right of citizens, male and female, to vote and hold office. The right to vote is a right of property. This was denied in 1703, but so held by Lord Chief-Justice Holt, who in Ashby v. White, 2 Lord Raymond, 953, said: "A right that a man has to give his vote at the election of a person to represent him in parliament, there to concur in the making of the laws which are to bind his liberty and property, is a most transcendent thing, and of a high nature, and the law takes notice of it in divers statutes."

"This right of voting is a right in the plaintiff by the common law, and consequently he shall maintain an action for the obstruction of it."—(Ibid. 954.)

In reply to the argument that no action lay for damages "because none had ever been brought," he said: "Indeed, that is an argument, when it is founded upon reason, but it is none when it is against reason." * *

"Let us consider wherein the law consists, and we shall find it to be, not in particular instances and precedents, but on the reason of the law, and *ubi eadem ratio ibi idem jus.*"

On appeal to the House of Lords, C. J. Holt argued: "Let all people come in and vote fairly; it is to support one or the other party, to deny any man's vote. By my consent, if any such an action comes to be tried before me I will direct the jury to make him pay well for it; it is denying him his English right, and if this action be not allowed, a man may be forever deprived of it."

Ward, C. B., and Bury and Smith, Barons, concurred with him, and judgment was given to the plaintiff by a vote of 50 lords to 16.

This settled as English law, that the right to vote was a common law right, a property right, and that the right to sue for a denial of it did not depend on precedents, but on reason which was the foundation of the law.

This was the common law rule in 1703, and as the right

of suffrage then belonged in county elections to the freeholders, who were accounted the full freemen, or to the inhabitants of boroughs who were freemen of the borough, it was a personal right which belonged to freemen as such. When the colonists revolted against English tyranny, and demanded the rights of freemen, they demanded the full measure of political rights as well as property rights.

Taking the common law of England as a guide, there is no propriety in excluding woman from voting on the ground that she has no political rights at common law.

Parish elections in England were the same as town elections here. Women voted at such elections.

In 1739, Sarah Bly had been chosen Sexton of St. Botolph Parish by a vote of 209, while her opponent named Olive had 196 votes. He contested the election because 40 women voted for her, and on the ground that women had no right to vote. Chief-Justice Lee decided that women were entitled to vote, and Mrs. Bly was legally elected. He cited cases showing that women had voted for members of parliament.—(Olive v. Ingram, 7 Mod. Reports, 264.)

In Holt v. Lyle, in Catharine v. Surrey, and in Coates v. Lyle, it was decided that women, having the qualifications of a male voter, had a right to vote.

In Yorkshire, from 1407 to 1445, the returns of election were made by indentures signed by the attorneys of the great lords of the franchise, who appeared and voted by these attorneys.

In 1411, the electors were the attorneys of six lords, and the attorney of Lucia, countess of Kent, who were common suitors to the county court. In 1414, the indentures are sealed by the attorneys of the archbishop of York, the earl of Westmoreland, the earl Marshall, the Lord le Scrobe of Mesham, Peter de Manley, Sir William Mesham, the Lord de Ross, Margaret lady Vavasour, and Henry Percy.—(Stubb's Const. History, p. 425.)

The custom in the boroughs varied. In some, the right to vote was placed in the freemen of the borough; "the character of a freeman being personal, and not connected with tenure of land or contribution to the public burdens." In others the

members of parliament were returned by the lord or lady of the manor.

In 1572, Dame Dorothy Packington, lady of the manor of Aylesbury, returned the two members.—(3 Stubb's, 433, 434.)

Even upon the theory that the duty of bearing arms and the right to vote were inseparable, women had the right to vote.

In 1297, the King called for troops and ordered all ecclesiastics and widows holding lands in chief, that is, not under any lord, to furnish their due service.—(2 Stubb's, 297.)

The commutation, by money payment, of personal military service, was established in 1159, and the tenants of the crown, who did not choose to go to war, paid a tax of two marks on the knight's fee.—(1 Stubb's Const. Hist., 493, 494.)

In 1311, the church paid for its quota of military service by tax, and "one man at arms was to be furnished by every township to serve forty days * * * but it was generally redeemed by money payment."—(2 Stubb's, 368.)

This was the custom in England prior to 1776, and effectually explodes the theory that only able-bodied men fit for military duty were, and should be entitled to vote. Military service then as now, was paid for—and the taxes came from women as well as men. Persons who possessed a freehold voted, whether men or women, unless the female freeholder was married, and after the time of the Norman Conquest the female freeholder endowed the husband with the right to vote during her life.

The decision in the case of Harland v. the Territory, rendered by Justices Turner and Langford at the January Term, 1887, held that the suffrage acts of 1883 and 1886 were invalid because the titles purported to amend simply a section of the Code of 1881. The validity of these titles under the organic law was not contested, nor ruled upon in the District Court.

The record of the Harland case shows that Harland objected to married women as grand jurors, because they were not householders, not because they were not electors. Exception was taken on that point as to the qualification of jurors, and on no other point. The assignment of errors covered that and

no other point in regard to the construction of statutes. The question was whether the law of 1879, removing the civil disabilities of married women, made them householders and qualified them as householders to be grand jurors. That is, whether the married women's law amended the jury law. The court below held it did. The appellate court had jurisdiction of that question and reversed the ruling of Judge Hoyt. The question as to whether an adult woman was a qualified elector was waived. One woman was on the petit jury which tried and convicted Mr. Harland. No objection was made to her.

The question of the validity of the title of the Act of 1883, amending section 3050 of the Code of Washington, was not before the Court below, and no error was assigned on that point.

The Organic Act provides:

"Writs of error, bills of exception and appeals shall be allowed from the final decision of the district courts to the Supreme Court of all the territories respectively, under such regulations as may be prescribed by law."—(Sec. 1869, R. S. U. S.)

To make a writ of error in criminal cases effective, "within ten days after the writ is received by the clerk of the district court the plaintiff in error shall file with the clerk of the district court an assignment of errors specifically pointing out each error complained of."—(Sec. 1142, Code of 1881.)

"Sec. 1147. On hearing of writs of error, the Supreme Court shall hear all errors assigned; and on the hearing of appeals shall examine all errors and mistakes excepted to at the time, whether waived by the strict rules of law or not, but the court shall consider all amendments as made which could have been made, and shall give judgment without regard to technical errors or defects, or exceptions which do not affect the substantial right of the defendant."

In the case of Freany v. Territory, 1 Wash. Ty. Reports, 71, it was held that a plaintiff in error cannot waive a decision on a point in error in the court below, and avail himself of it, in the appellate court.

Hence Mr. Harland could not waive the question whether a woman was a qualified elector and juror in the court below, before the rendition of the verdict, and raise the question on error in the appellate court.

Sec. 2079 of the Code provides: "Nor shall the disqualification of any member of a grand or petit jury affect the indictment or verdict, unless the juror for that cause was challenged or excepted to before the rendition of their finding." —(Code p. 354.)

The appellate court had no jurisdiction in the Harland case of the qualifications of petit jurors.

According to the record Mr. Harland was tried by an impartial jury.

The same law deprives the Supreme Court of jurisdiction to determine whether women were qualified electors unless that question was ruled upon by the court below, exception taken and error specifically assigned on that point.

Jurisdiction in the appellate court to decide a point must be shown by the record. It must show that the point was made in the lower court.—(Detroit R'y. Co. v. Gothard, 114 U. S. 136–7.)

"Objection not made in the court below cannot be taken here. To hold otherwise would involve the exercise on our part of original instead of appellate jurisdiction."—(Supervisors v. Lackawanna Iron Co., 93 U. S. Rep. 621; Wilson v. Mc.Namee, 102 U. S. 573; Springer v. United States, 102 U. S. 593; Ritzer v. Wood, 109 U. S. 187: Zeller's Lessee v. Eckert, et. al. 4 How. 297; O'Reilly v. Campbell, 116 U. S. 420; Upton v. McLoughlin, 105 U. S. 644–646; Hagan v. Kurtz, 94 U. S. 774; Scholcy v. Rew, 23 Wall. 343; Beaver v. Taylor et. al. 93 U. S. 55.)

Appellate jurisdiction is confined to the exceptions actually taken at the trial.—(R'y. Co. v. Heck, 102 U. S. 620.)

The record must state and point out distinctly the errors of which complaint is made. It ought also to show the grounds relied upon to sustain the objections presented, so that it may appear the court below was properly informed as to the point to be decided.—(The Frances Wright, 105 U. S. 389.)

"We do not presume error by inference from the record, nor do we declare it, except when it is made affirmatively to appear."—(Danvers v. Durkin [Oregon S. C.] 12 Pac. Rep. 61.)

Where the crime was prosecuted by information instead of indictment, and came up to the appellate court on a certificate of division of opinion, but the constitutionality of prosecution by information was not one of the questions on which the judges divided, the Supreme Court of the United States held that it would not pass upon that question until the court below acted on it.—(United States v. Waddell, 112 U. S. 82.)

Under these rulings the validity of the title of the election laws of 1883 and 1886, were not before the court in the Harland case, and the opinion rendered by Justices Turner and Langford on that point are mere dicta—individual opinions outside of the case. They have no value except their intrinsic merits as statements of the law governing the construction of statutes.

Under the strict rule laid down by Justices Langford and Turner, the Supreme Court of the Territory was without jurisdiction to hold a session in January, 1887, or to hold the January Term, 1888. The reasoning, however, in that case has not been followed in subsequent cases where the court has affirmed the results in the Harland case.

Whether the Harland decision was a correct statement of law or not, and whether at any time since that decision was rendered, women were not competent electors, the objection to their voting is disposed of by the statute just passed. The chief opposition to the recognition of woman as entitled to vote comes from men who fear that the rights of property, which they claim, will be affected by female suffrage.

Liquor dealers claim an absolute right in their property which cannot be affected in any manner by legislation, and invoke the fourteenth amendment in their defense. Railroads claim the absolute right to fix freights and fares as they please, free from territorial legislation. The agents, however, of liquor dealers and of corporations persistently denied the right of adult women, who under our laws are recognized as equal to

men in civil rights, to exercise any political rights whatever. They placed property rights above political rights. Their claim is essentially this: That the Fourteenth Amendment can be invoked to protect property, but cannot protect political rights. That they have the right, provided they can command the majority of votes, to disfranchise a class of citizens whom they fear will be hostile to their interests and will attempt to regulate such interests for the benefit of the community at large. They would disfranchise the working men of this country, if they had the power.

So far the battle for woman suffrage has been won.

The best men of the territory, who believe that the inalienable rights of freemen belong to women as well as men, will sustain the law.

Seattle, W. T. *W. S. Bush.*

MARRIAGE IN THE GERMAN MIDDLE AGES.

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II.

The greater emancipation of women was partly apparent when the right of compelling betrothal was taken away from the guardian, and when the laws of the Franks, Saxons, and Lombards all agreed in guarantying the independence of the woman. Whoever married his daughter against her will was laid under obligation to make good the harm which might thereby accrue to her, as if he had caused it himself.

Nevertheless it was a good German custom that the maiden in taking the important step of her betrothal should be guided by the counsel of her parents and friends. Ulrich von Lichtenstein, in his *Book for Women*, says: "Let a maiden who has no parents, follow the advice of friends; if she will give herself to a husband, she may truly have to live in disgrace." It is, perhaps, from this point of view that we can explain the heavy punishments with which the abduction and carrying off of women were followed, while yet there was a tendency to see the original form of the conclusion of marriage in this act, and to found the structure of German marriage upon a basis similar to that at Rome, where it arose out of the rape of the Sabine women. If the robber fled with the woman to the protection of a church, then, according to Friesian law, the judge was to burn the houses which he had entered on his flight, and which had been the scenes of his crime, and he was to break into the church, and draw forth the robber to severe punishment. The woman, too, who consented to the abduction, made herself guilty of a wrong act, and was deserving of

punishment, according to German law. Nevertheless, in the Middle Ages, abductions were numerous both in life and in romance. The laws, although severe in their terms, were mostly too weak, the power of the man was commonly too great, and the delight in dangers was too widely spread to make it otherwise than that bold chivalrous spirits should prefer such a wooing to the sober commonplace courting of parents and friends.

We may also here note the peculiar practice of the Middle Ages, which showed itself in the princes and lords frequently coming forward as suitors for their courtiers, and doing this under a title of right. If a maiden pleased one of the servants of the prince, or a youth engaged the affection of one of the damsels of the court, the prince sent his marshal to the house, and made him woo the person in question, and this was a wooing that could bear no contradiction and no refusal.

"Listen, ye masters, everywhere,
The king and marshal thus declare,
And this command is what must be:
I here proclaim young A. with D.,
Infeft to-day, betrothed to-morrow,
Wed in a year withouten sorrow."

Thus sounds the verse which the imperial marshal was wont to sing in Frankfort-on-the-Maine before the house of the person wooed for. Down till the sixteenth century we find traces of this obnoxious custom, while a great number of documents gives us the proof of how zealously the cities sought to free themselves from such limiting and disregard of the free personality.

It was a further step in civilization when it came about that the sum to be paid for the bride was no longer given to the guardian, but was applied, directly or indirectly, so as to form a provision for the bride herself should she become a widow. At length the meaning of the purchase disappeared more and more, and, instead of it, we find only a symbolical or apparent purchase, of which there are still traces to be found in the traditions and usages of the present day.

The purchase of the right of guardianship thus came to appear only as a symbol; and as among the Franks it took the

shape of the payment of a shilling and a penny, the opportunity was also given to the Church to introduce in place of the pieces of money another symbol, which has kept its place till our day as the most suggestive and beautiful symbol of all. This is the *engagement ring*.

The engagement ring was originally a Roman symbol, which it was customary to use from the oldest times at marriages. It was to be worn on the fourth finger, for from it, according to the Romans, there went a vein from the heart, and it was put on the left hand because it was nearest the heart. All this has become a custom consecrated by antiquity, and carried on to our own days, although the science of anatomy has long since shown the erroneousness of the idea underlying it. It may be observed, however, that the Dutch—the most sober-minded people in the world—have commonly no engagement rings.

The crusades introduced deep changes into the whole social life of the time, and they were not without enduring influence upon the relations of women generally, and upon marriage in particular. Whole masses of people streamed together for the same purpose; they were united by the call of the Pope, and the Christian faith; and each of them presented the manifestations of a hitherto exclusive nationality, and each was ready spiritually both to give and to receive. It was—if the figure may be allowed—as if the waters of all the quarters of heaven had become united, to foam for a time in the same channel, and when they separated, what stream could be said to have kept its earlier current? What stream rather had not both given and received? Could it be otherwise than that the soil upon which the different populations thus met, presenting the ruins of the Greek and Roman civilization among which they pitched their camps, as well as the fantastic life of the East, should work strongly upon these receptive hearts?

The wild, rude warriors became polished knights, and the influence exerted upon the mental education of the women was equally marked. Here we may recall the fact that the women had been the subjects of culture from an earlier time, so that even Wolfram of Eschenbach could only transmit his poem to the after-world through the pen of a woman. Women

were now compelled to step out of the domestic circle into the public movement of life, and the honorable but awkward social relations of the sexes were forced to yield to lighter and finer forms. This resulted in the old pure love of the age of the minstrels.

I will not say that it was the conscious policy of the Church to give nutriment to the chief tendencies of the time, and to impress upon them the ecclesiastial stamp in such a way that she might always continue to be the leader and center of the spiritual movements. It was rather an instinct which made her capable of this, and it also arose as a reaction from the spiritual movements themselves. The Church thus made the old German warlike spirit serviceable to herself by inciting it to the work of Christian conversion; and it gave an ideal to the new growing reverence for women in the worship of Mary. This Mariolatry was indeed not new; in earlier centuries it had even found extravagant expression, which had been forbidden by the Church; but it now burst forth with conquering force, and the worship of the heavenly lady could not but react upon the position of earthly women. It is, however, not my intention to give a history of the idea of love presented by the minstrels and troubadours, nor to enter upon its fine forms and its degeneracies, its inwardness and its play of feeling, its souud substance and its peculiar outgrowths.

By the influence of this ideal love the marriage relation was transformed, and the yoke of marriage was lightened for the woman; but ultimately it was also so weakened that it held together but loosely, and became carious and unsubstantial. Marriages became generally finer, but they also gradually became less moral. An increasing respect was paid to women as a whole, but the individuals often showed themselves to be less worthy of it than before. Women loved more, and were more loved; but it came ultimately to this, that men came also to love the wives of others; and Ulrich of Lichtenstein, the prototype of this degenerated love-worship, travels for months to see his lady-love, and then goes back to his not unloved wife, who receives him in a friendly way, as if all that were understood of itself. The romance literature of the twelfth

and thirteenth centuries may be referred to, as giving full proof of these observations.

But such an idea of marriage did not long find a place in Germany. When the sun of the Hohenstaufens, with all the poetry and culture which it cherished and charmed forth, went down—when the minstrels no longer vied in poetic contests for the favor of princes and ladies, but the harp had given way to the sword—then did women also descend from that artificial and giddy height, and became again honest spouses and housewives, as they had formerly been.

We now turn to the form of the *celebration* of marriage, and we shall also draw into the circle of our view the act of priestly consecration, which will bring us up to the verge of the parliamentary conflicts and controversies of modern times.

It has been already said that the essential element in the formation of marriage was the purchase of the bride, as it had taken form in the course of time. This had become symbolically an apparent purchase, and a sort of dowry was thus bestowed on the bride herself by the bridegroom. If we add to this the delivery of the wife and the right of guardianship over her to the bridegroom, which took place publicly in the place of justice, called the *mallum* (whence the German word *Gemahl* for husband), we have the elements that constituted the conclusion of the marriage. At least this held where, and so long as, nothing was known of ecclesiastial consecration, for till then there was no legal distinction between betrothal and marriage.

The form in which the delivery of the wife took place was simple and natural. A suitor—or, as he was called, a "for-speaker"—inquired into the mind of the two marrying persons, made them exchange their consent, completed the purchase, and gave away the bride. The *laws* of the time are silent about the mode of the celebration of marriage, and little further knowledge than what has been now indicated could be drawn from them. Marriages were to be publicly constituted. All the laws demand this; but with this condition the secular lawgivers were satisfied in a matter which was regarded as belonging to the special domain of the Church. How-

ever, the ecclesiastical regulations, numerous as they are—and their substance will afterward be shortly indicated—give us no picture of the real life of the time, but only state the obligations of the Christian religion and of morality, which were mostly unfulfilled.

It is only the poetry of the Middle Ages that gives us glimpses into the life of our early ancestors, and we shall let it speak on the subject.—Thus in the *Meir Helmbrecht* the wedding of the robber Lammerschlind with Gottelinde, a peasant girl, is thus described:—

"Then rose an old man loftily,
And wise and full of words was he,
And spake full well of everything.
He put them both within a ring,
And spake to Lemberslinde,
Will you have this Gottelinde
To wed and keep? If so, say yea.
Most gladly yea the youth did say.
He asked him once again next hour;
Most gladly, said the youth once more.
A third time he did ask again.
And will you take her? When, more plain,
He said, Upon my soul and life,
I willing take her as my wife.
Next said he to Gottelinde,
Will you have Lemberslinde?
And take him willing for your man?
Yes, sir, if I, with God, it can.
Take you him willing? again said he.
Willingly, sir, if you give him me.
A third time asked: Will you have him?
Yes, sir, if now you give me him.
Then gave he Gottelinde
As wife to Lemberslinde.
And he gave Lemberslinde
As man to Gottelinde.
All sang, joy to express,
And he her foot did press."

The last line, "And he her foot did press," requires a word of explanation. This was, in fact, a sign of taking possession, as when the foot was placed upon a bought house, or a bought field, and it was thus declared to have become the property of the person. In the present day the belief still prevails here and

there in the country, that if the bride puts her foot upon that of the groom during the wedding, she will have the right of dominion in the marriage. Do we not find in this an explanation of the idea attached to the slipper of the wife ruling her husband.

We find also in the Niebelunglied that the marriage of Siegfried and Chriemhilde was celebrated in like manner:

"They bade them with each other then enter in the ring,
And asked her if she willingly would have the valiant king.
In maidenly simplicity she blushed, and paused awhile,
Yet was it for the happiness of Siegfried, without guile,
That she did not refuse to stretch to him her hand;
So willingly she wed the noble King of Netherland.
And as he vowed to love her, as the maid to him had done,
The friends looked on with gladness, and saw how they were one.
And Siegfried in his arms embraced his loving bride again,
And kissed was fair Chriemhilde by many heroes th n

In these examples we nowhere find even a trace of ecclesiastical consecration. Was there such a thing at all at that time? and was it demanded by the Church as indispensable and necessary? It is beyond doubt that the Church has never ceased to represent the priestly co-operation at the celebration as praiseworthy and conducive to salvation, and that since the year 1215 it aimed at making the conditions formerly used in France to be universally observed. But it can just as little be doubted that up to the time of the great Council of Trent, or to the middle of the sixteenth century, it also recognized the marriages that had been celebrated without the co-operation of the priest as legal and valid, although it also laid down penalties for those who were married apart from or without the Church.

The people, however, kept tenaciously to their hereditary usages; and while, in the northern kingdoms, the ecclesiastical influence appears to have early gained ground, we hear in Germany the lamentations of the Church councils about marriages being celebrated in an unecclesiastical way; and as late as the fourteenth century it is written in the Julich Ritterrecht dryly thus: "If a man belonging to the nobility wishes to take a wife, then they may together give a public pledge before the people. This is the direction of the nobles and aldermen (Upla-

den); such is a right marriage among the nobility and an old custom."

It was only in the twelfth century that the higher classes began to accommodate themselves to the demands of the Church, and that ecclesiastical celebration of marriage was regarded by them as right and becoming. * * *

But now we shall attend a marriage itself. The engagement has already long since taken place. The father of the bridegroom has, according to old use and right, asked the father of the bride for his daughter, and greeted her as the betrothed of his son; the maiden has blushingly nodded her consent; the fathers have concluded the alliance; a draught of good wine has sealed it between the parents, and an honest kiss between the young people. Then in the house of the bride there has been a busy time with sewing and tailoring. The female friends and playmates gave their help, and the gown was sewed, with its gracefully folded train carefully measured to its due length, for the rigid rule of the Town Council was inflexible. Then the linen is drawn from the press—from earliest times the pride of the German housewife; and the bridal dress is made of foreign samite, mostly white, artistically embroidered with gold according to the position of the bride, and as the high and wise Town Council allowed it. And now, as the day of the marriage approaches, when the criers in the church have challenged in vain all men and women to say, frank and free, if they know of any hindrance to the marriage, the turmoil in the house of the bride becomes greater and greater. The artistic tailors come to fit on the marriage dresses. The brethren of the guild of Hans Sachs, or St. Crispin, appear, bringing the shoes finely worked in silk and cordovan, and embroidered in the daintiest way with gold. To rich brides the artist brought the ornamental *tampion*, a girdle consisting of costly metal plates, and adorned with little bells, and then when the bride stepped in, there was a sweet tinkling sound, but those who were not so rich had to content themselves with a gold chain or a beaten silken band; for so the command of the high authorities willed it. The purser contributed the leathern pocket that hung at the girdle, which was finely knitted, and which

went along with spindle and key as the symbol of the housewife.

There came also the "marriage-bidders," in their gay holiday attire, and with their well-known sayings. When they had spoken the beginning of their story, every one could carry it on. Their form of invitation had been addressed to the grandparents and great-grandparents in their day, and all knew it.

Rich people also summoned the chief of the Drumguild, and he was enjoined to have the drums well beaten on this festive day, and to make the trumpets sound forth. The music was the finer the louder it was.

At last the longed for wedding-day comes. On the previous day perhaps a little festival has taken place. It was the rule in Lubeck that the bride should not invite more than six-and-twenty maidens, and that the dance should not last longer than till two o'clock in the afternoon. There was to be no uproarious assembly in the evening. Early in the morning of the wedding-day the bride and bridegroom have each, in their own house, assembled their friends and companions around them. All are festively entertained with food and drink, so far as the Town Council allowed it. Then the procession is f rmed before the house of the bridegroom. In front are the never-failing musicians; then comes the bridegroom in his finest clothes. He has the groomsman at his side, and other friends in the rear, and amid the merry swell of the music he approaches the house of the bride.

Formerly it had been the custom—and it survived in the country till late in the eighteenth century—that the bridegroom should now again sue solemnly for his bride. In the cities, however, this custom had almost died out by the end of the fifteenth century. In the house where the marriage was held the bride and bridegroom silently greet each other, for so the custom of the time would have it. The bride stands closely surrounded by her bridesmaids, with a wreath upon her head, and with her hair neatly tied up, which had hitherto fallen freely down upon her shoulders. Soon the bells of the parish church sound full and strong through the streets, reminding the citizens that a new household is being founded, that two in-

habitants of the city are about to enter into the marriage bond. It is the sign for the starting of the marriage procession. The musicians again step ahead; next comes the bride, with her maids and her kin; and behind follows the bridegroom with his friends. The procession is hurriedly followed by the jesters and the players, who try to win a laugh from the honest burghers as they stride past, or a blush from the women, or a hurrah from the surrounding crowd. The procession halts before the church door. The clergyman stands there in full canonicals, and as the bride and bridegroom step up before him, with a loud voice he commands all to be still. This is indeed very necessary, for the jest makers look more to plying their trade than to the earnestness of the holy ceremony. Once more the priest speaks, and announces to the assembled people that a marriage is here about to be celebrated. He asks for the consent of the marrying persons; he makes them exchange rings as the pledges of wedded fidelity; and he declares that the covenant of marriage is formed, and blesses it. The whole procession, with the priest at its head, then enters the church; the bride and bridegroom partake of the holy communion; and with this the ecclesiastical solemnity is brought to an end.

In the same order as that in which it had come, the procession now returns in a festive style to the house, or even to the Town Hall, only that the bride and bridegroom now walk side by side.

In the house the table is covered, and the guests sit down in any order, the women and the men together,—a custom which was formerly thought improper,—and they eat and drink in honor of the young pair.

Around the tables go the riddle-makers and the speechifiers, rewarded by the laughter of the company, and sometimes also by a smart well-meant blow, which was not taken amiss; but they preferred to have a gift of some kind. Later came the actors and the players, and then, according to the command of the Church, the clergy who were present retired.

After they rise from the table, during which time the bride has modestly covered her head with the wifely hood, the young people sit down together to receive the marriage presents,

which are regulated by the rank and means of the guests. Thereafter the dancing begins in graceful circles, generally opened by the bride and bridegroom; and it is regarded as a high honor to dance with the bride. All the friends of the young couple are invited to the dance; for, as the Nuremberg order of marriage says, "Then, after the table, they may ask to the dance whoever they like, but on the condition that nothing else shall be given to eat or drink but fruit and confections and French wine or Rhenish wine, or some such other." At last the joyful company disperse, and go home, but not without giving a gratuity in money to the servants in waiting: to each of them at most two farthings, according to the regulation of the Nuremberg Town Council.

It may be observed that the disorderly habit of the charivari, which prevailed in France till the fifteenth century, does not appear to have been common in Germany. When a widow was married, the fashion was for all the unmarried men in the place to gather in the evening before her house, disguised in masks, and provided with kettles and other tin and copper utensils. With this they made a jingling and discordant music, that went thrilling through marrow and bone, and which they only brought to an end when they received from the house the usual presents, and especially the coveted draught of wine.

On the morning after the marriage, the festivities began anew. The young married people invited their friends to "egg-cakes" or omelettes,—but fritters and pork pies were also allowed,—and, although the olden times kept up no festivities before the marriage, yet so much the more were they in favor after it, so that they often lasted for a whole week. On the following Sunday the new-married pair went solemnly to church, and for the first time worshiped together; and the magistrates took witness of it, and this had to serve as evidence of the marriage; for there were no church registers yet.

And this was the way of marriage and its celebration, in the German Middle Ages.

THE POWER OF STATE LEGISLATURES TO GIVE AWAY HARBORS

Since the decision of the United States Supreme Court, in Pollard's Lessee vs. Hagan, (3 How. 312), it seems to have been supposed that the several States own the soil under the navigable waters of the great lakes, as they do the dry lands which they may hold as private property; that the Legislature might sell, or give away these submerged lands, with or without justice or reason, and with or without the imposition upon the grantee of any duties respecting them.

Acting upon this supposition, the Illinois Central R. R. Company obtained from the Legislature of Illinois the memorable Act of April 1869, which was passed over Governor Palmer's veto, a majority of all the members elected being all that was required at that time.

The section of this act which relates to the land under Chicago Harbor, purported to grant in fee, to the railroad company, more than a thousand acres of the soil under Lake Michigan, opposite the wholesale business portion of Chicago, from the main river south to 15th street.

The grant included the 275 acres about to be inclosed by the United States, and if valid to the extent claimed by the company, the breakwater, subsequently constructed by the national government, would belong to this corporation.

The water area comprised in the grant is several times larger than that of all the great merchandise docks of London, three times as large as that of the Liverpool docks and basins, and

more than twice the area of the port of Marseilles. It is also many times larger than the pier area of the water front of New York City, which that municipality has managed to keep and make profitable to itself.

History furnishes no other example of an attempted gift of soil under the harbor of a great city, of such extent, to be held as private property, without the imposition of a single public duty of developing facilities for commerce and navigation.

In the same section it was provided that this fee should be "held by said company in perpetuity," and that the act should not be construed to authorize obstructions to the harbor, or exempt the Company from any act regulating wharfage or dockage.

There was no consideration whatever for the grant, and as the Company is a perpetual corporation, forever exempt from taxation of every kind, except a State tax of seven per cent of its gross receipts, it was evident that the City was to be forever deprived, not only of the beneficial use of this immense property, but also of any revenue from it by way of taxation. Even the State could only get seven per cent of possible receipts from possible improvements by the company, which improvements it might make at the option of its non-resident directors, or might never make, or permit to be made.

Upon the theory of an absolute title in fee, the State could regain no proprietary interest, unless by condemnation and payment of damages to the company.

The only rights conceded to remain to the public were, the power of the State to regulate rates of wharfage and dockage, and the supervision of the United States engineer, to see that the company did not actually obstruct navigation by material erections.

These essential, inherent attributes of sovereignty, it would indeed be preposterous to claim were abdicated in favor of the company, but they would be of little practical benefit to the people, even if improvements were made by the grantee.

If the act were equivalent to a grant of an absolute fee in high lands, the exclusive power to develop, or prevent develop-

ment of Chicago Harbor, would be conferred upon a railroad corporation whose interests are essentially antagonistic to natural and untrammeled water ways. That this company would not foster navigation, might reasonably be presumed; its actual policy has always tended to hinder its growth on the lake front. It has been diligent in hiring out portions of its domain to other railroads and subordinates. So far from undertaking a *bona fide* development of harbor facilities, and building up of competition with railroads (as would have been done by public officers appointed for the purpose, or by private individuals competing for profits dependent on the improvement of water ways), the facilities it has furnished for navigation have been such only as were ancillary to the purposes of a railroad corporation.

If this should be the invariable management, what more effectual obstruction to commerce and navigation at this port could the legislature have accomplished? On the other hand, if it should change its policy, and go chiefly into the business of developing commerce and navigation on its property, the result in time would be that these great interests would be actively controlled by the corporation, instead of passively subordinated to it, and the real "power to regulate commerce," as to Chicago Harbor, would be in the Illinois Central Railroad Company.

Whichever course the company should pursue, the interests of the people would have suffered, for what they require is a system of public wharves, piers and docks, to be extended as rapidly and appropriately as public convenience may demand, and, further, a provident care for future enterprises on the lake front, the full nature of which no man can foresee.

There was a special feature of injustice to the City of Chicago, in that the gift to the railroad company covered the riparian rights opposite the vacant land from Randolph Street to Park Row. This vacant land had been donated to the city by the United States—a part of it directly and a part allowed to be dedicated by the Canal Commissioners—and the riparian rights appertaining to it belonged to the city, and could be used for profit.

The railroad company, a purely private corporation, in stock, property and profits, and organized for private advantage, yet insisted that it must be presumed to be a good guardian of public interests. One of its counsel said: "The State, the public interest, and the corporation were of perpetual duration. There was no reason for suspicion that one of them would survive the others."

The fact that a railroad corporation owes a certain class of duties to the public, is often put forward in such a way as to seem a justification for excessive grants and subsidies. On such occasions it is made to appear as a sort of public functionary, or instrumentality wholly for the benefit of the people. But we are not without examples of the difference between theory and practice in this regard, and some of them are the evil results of railroad occupation of navigable waters. Jersey City is a familiar case in point. It was stated by a leading newspaper that railroads "own every dock but one along the four miles of Jersey City's splendid water front and not a cent of city taxes does all this property pay. This fact operates disastrously upon every interest of the city," which the writer proceeds to show, in details too long for quotation here.

Now, since there could be no prospective public benefit in making a simple grant of a great harbor to a corporation organized for land transportation, it may be supposed that it was a testimonial of gratitude for public benefits conferred by the Illinois Central Railroad Company.

The truth is that it would be difficult, if not impossible, to find another railroad corporation which has received from government, benefits so large in proportion to the cost of the enterprise it undertook. It secured a perpetual charter, instead of one of fifty years duration, as the general statutes provided; a perpetual exemption from all taxes except seven per cent of its proceeds for the State; a right of way twice as wide as the general statutes allowed, and unlimited power of making rates. It secured a grant of nearly three million acres of land (3695 acres per mile) worth probably several times the cost of the road; on a part of which lands its construction bonds were secured and then sold at par, furnishing the money

to build the road. It obtained from the city authority to locate a right of way, three hundred feet wide, along the lake front, bordering on the great wholesale district, in consideration for building a breakwater, which was necessary to protect itself. As soon as it got into the city it commenced to occupy large portions of the harbor and has appropriated all from the main river to and beyond Randolph Street, as well as a great tract south of 12th Street.

In 1873, the Legislature passed an act, in a few lines, ordaining that the act of 1869 "be and the same is hereby repealed," but the railroad company has always denied the validity of this repealing act.

As is well known, the case of the People against the Company, involving the validity of these acts, has been heard by Judges Harlan and Blodgett, and a decision lately rendered, which will be presently referred to.

Among other arguments against the claim of the company under the act of 1869, it was contended that the act was void because the Legislature had not the power to grant a public harbor, to be held as private property, without making express provisions for the public interest respecting navigation.

I believe it has never been held that a legislature has this power, and it would seem that a decision affirming it would be a complete nulification of the doctrine so often asserted by the courts, that the soil under navigable waters is held by the State "as sovereign, in trust for the public."

In Martin v. Waddell, 16 Peters 366, Judge Taney declared that these lands are held in a public and regal character, as a public trust, not to be held by a subject as his private property, and that they went with the prerogative powers of government.

In Weber v. Harbor Commissioners, 18 Wallace 57, the U. S. Supreme Court, Justice Field delivering the opinion—uses the following significant language respecting the soil under the harbor of San Francisco: "It is contended with much force that the statute (the California statute of limitations) applies to land which the State holds as private property, for sale or other disposition * * * and not to lands which she holds as sov-

ereign in trust for the public."

In Barney v. Keokuk, 4 Otto, 324, Justice Bradley, delivering the opinion of the Supreme Court, remarks: "The public authorities ought to have entire control of the great passage ways of commerce and navigation, to be exercised for the public advantage and convenience."

In Smith v. Maryland, 18 Howard 72, it was declared to be the duty of the State "to preserve unimpaired those public uses for which the soil is held. * * What in general are the limits of the trust upon which the State holds this soil, or its power to define and control that trust, are matters wholly without the scope of this case, and upon which we give no opinion."

Like doctrines are affirmed by various State courts, and, in particular, expressed in vigorous language by Judge Kirkpatrick in Arnold v. Mundy, 1 Halst. N. J. 11.

In Attorney General v. Parmenter, 10 Price 378, affirmed in the House of Lords, a case involving the validity of a grant by King Charles I, which included the Harbor of Portsmouth, the Court intimates that "the King could not grant such creeks and ports, including the greatest port in the Kingdom and one of the most important."

This is not the place for a discussion of this doctrine of a trust in the soil under navigable waters, nor of the remedy in case of a flagrant violation of the trust by a legislature. And the general question of the power of a legislature to commit a manifest and permanent public wrong, unless restrained by an express constitutional provision, cannot here be entered upon.

It may be noted however, that the power of irrevocably giving away the people's property is distinguishable from strictly law-making functions; the prescribing of rules or methods of action, obligations, or sanctions of conduct.

The decision of Justice Harlan, in case of the People against the Illinois Central Railroad Company, momentous to the interests of Chicago, as it certainly is, does not definitely settle the question which is the subject of this article.

The Court does, indeed, hold that the railroad company did not take an absolute, unqualified fee, nor a vested estate in the

submerged lands which could not be constitutionally impaired; that "a trust was engrafted upon the fee in the submerged lands, for the benefit of the public;" that the grant, until acted upon, amounted to no more than a license, and that the repeal withdrew from the company "the additional powers given by the act of 1869, for the accomplishment of certain public objects."

This conclusion, however, is deduced not merely from "the nature and situation of the land granted;" but also from the terms of the grant, requiring the fee to be held by the company in perpetuity, forbidding obstructions to the harbor, and reserving the right to regulate rates of wharfage.

The made land, wharves, piers, and docks, which have been actually constructed by the company, in the harbor, are not interfered with, because they were constructed under license, opposite that part of the shore which the company had purchased and owned in fee, but the title to the remainder of the land embraced in the act of 1869, is held to be as it was before the passage of that act.

While this decision, restoring to the people the domain which Governor Palmer, in his veto message, well called an "imperial gift," is gratifying to all public-spirited citizens, it is to be regretted that the Court did not consider it necessary to define the trust upon which the States hold the soil under navigable waters, and determine the limits of the powers of their legislatures over them.

In the celebrated case of Gibbons v. Ogden, 9 Wheaton 1, the U. S. Supreme Court held that several acts of the New York Legislature, granting to Livingston and Fulton the exclusive navigation of the waters of the State, in steam vessels, were void; reversing the decision of the New York Court of Errors. In the light of principle, it is difficult to see why a State should have any more power to make a grant of the character which the Illinois act of 1869 was claimed to bear.

The infirmity of the New York acts was, their injurious effect upon commerce and navigation between the States, and with foreign nations.

If the Courts cannot define and control the trusts upon which

the soil under navigable waters is held, it would seem to be the duty of Congress to do so, before shrewdly devised "legislation," in the interests of railway syndicates, shall permanently obstruct the development of competition by water ways; a competition which has proved to be the only effectual check upon railroad extortion.

In our modern politics, there are more influential advocates for grants, subsidies, franchises, privileges, and financial "protection of infant industries," than there are for the people, out of whose resources and earnings all these good things must come.

The charge that our governments may be worked in such a way as to hamper the many for the advantage of the few, may be a reflection on human nature, but as Mr. Madison says, in the Federalist: "What is government itself but the greatest of all reflections on human nature?"

Other instances of abuse of power over harbors could be mentioned, but the one herein referred to ought to be enough to arouse the people to demand additional safeguards for that species of property.

Alexander S. Bradley.

REPRESENTATIVE MEMBERS

OF THE CHICAGO BAR.

BENJAMIN F. AYER

Was born at Kingston, Rockingham County, New Hampshire, April 22, 1825. One of his ancestors was John Ayer, who came to this country from England in 1637, and settled at Haverville, Massachusetts, in 1645. His father, who was an enterprising merchant, died in May, 1875, near Manchester, New Hampshire, at the age of 83.

Benjamin F. prepared for college at Albany Academy, Albany, New York, and having afterward pursued the regular collegiate course at Dartmouth College, he graduated from that institution in the class of 1846. In the same class were A. H. Quint, D. D., of New Bedford, Massachusetts, Professor Charles A. Aikin, of Princeton College, formerly President of Union College, Isaac W. Smith, Judge of the Supreme Court of New Hampshire, and others who have distinguished themselves in science, literature and active business pursuits.

Upon leaving college he studied law at Manchester, New Hampshire, for two years, and passed one year in the Harvard Law School. Having finished his preparatory studies, he was admitted to the bar in July, 1849, and opened an office at Manchester, where he soon entered upon a large and lucrative practice.

In 1853, he was elected to the New Hampshire Legislature, and was subsequently prosecuting Attorney of Hillsborough County, which position he held with credit to himself for three years.

In 1857, he removed to Chicago, and from 1861 to 1865, held the position of counsel for the City. While acting in this capacity he prepared the revised charter of the City, which was adopted in 1863. After retiring from his official position, he became a member of the law firm of Beckwith, Ayer and Kales, and later, the senior member of the firm of Ayer and Kales. These firms had a very large practice. They were counsel for the South Park Commissioners, for the West Division Railway Company, and several of the leading banks and insurance companies. Mr. Beckwith had long been known as one of the very ablest advocates in the City, and was afterward one of the Judges of the Supreme Court of the State. It is very seldom that one firm represents the legal ability of that of Beckwith, Ayer and Kales.

Since 1865, Mr. Ayer has persistently declined all public offices, though they have frequently been proffered to him.

In 1876, he accepted the position, which he still holds, of general solicitor of the Illinois Central Railroad Company.

In the management of the affairs of this great corporation, he has earned a high reputation for fairness and just dealing, and shown himself on every occasion equal to the responsibilities resting upon him.

Mr. Ayer was united in marriage in 1868, to Miss Jennie A. Hopkins, daughter of Hon. James C. Hopkins, Judge of the United States District Court, of Madison, Wisconsin.

He is a member of the Law Institute, of the Chicago Literary Society, the Historical Society, and the Chicago Bar Association, of which he has been President.

Some of the more important cases lately argued by Mr. Ayer, are, Illinois Central Railroad Company v. Baltimore and Ohio and Chicago Railroad Company, in the Appellate Court, First District; the same appellant v. The Chicago, Burlington and Northern Railroad Company, in the Supreme Court of Illinois, and The People *ex relatione* George Hunt, Attorney General, v. The Illinois Central Railroad Company et al., in the United States Circuit Court; the last being the celebrated "Lake Front Case."

His briefs in the last two cases are very elaborate, and either

of them would be sufficient to establish his reputation as one of the ablest lawyers in the country. The litigation with the Chicago, Burlington and Northern was instituted by a proceeding commenced by that company under the Eminent Domain Act, in the Circuit Court of Jo Daviess County. It was an attempt to condemn a portion of the property of the Illinois Central, including a part of its right of way, as well as a portion of the Company's yard and station grounds at East Dubuque.

This attempt to take a part of the property of one railroad for the purpose of building another, raised questions of an important and interesting character.

In the Lake Front Case, many of the positions taken by Mr. Ayer, were sustained by Judge Harlan, in the decision of the case. By an Act of Congress approved September 20, 1850, the right of way, 200 feet wide, through the public lands was granted to the State of Illinois, for the construction of a railroad with a branch to Chicago. The Illinois Central Company was, on the 10th of February, 1851, incorporated by the Illinois Legislature, and made the agent of the State, to construct the railroad provided for in the Act of Congress. By its charter the Company was expressly authorized to appropriate to its sole use and control land not exceeding 200 feet in width, through its entire length; and also to enter upon and take possession of any additional lands for depots, station grounds &c. "necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road."

April 16, 1869, the Legislature of Illinois passed an act entitled "An act in relation to a portion of the submerged lands and Lake Park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the City of Chicago." By the third section of this act the right of the Illinois Central Company to all the lands it had appropriated and occupied, lying east of the west line of the Company's roadway in fractional sections 10 and 15, as defined in an ordinance which had been passed June 14, 1852, was expressly confirmed. By the same section all the right and title of the State to the submerged lands constituting the bed of the lake, and lying

east of the Company's tracks and breakwater, for the distance of one mile along the lake, extending as far south as the Round House, was granted to the Company, its successors and assigns in fee—the grant being accompanied by certain conditions specified.

It was under these various statutes that the Illinois Central claimed the lake front land in controversy. The case attracted wide attention and much public interest was manifested in the result. It was argued by Mr. Ayer for the Railroad Company, with whom were associated Hon. Lyman Trumbull and John N. Jewett.

The Counsel for the State were George Hunt, Attorney General, E. B. McCagg, A. S. Bradley, James K. Edsall and John L. Thompson. For the City, Melville W. Fuller.

The substance of Justice Harlan's decision will be found in Mr. Bradley's article in this number of the "Times."

Mr Ayer is a man of literary culture, and a fine conversationalist. He has a clear, clean-cut intellect, and a discriminating knowledge of men and things, and is, therefore, admirably adapted to the position which he fills. He is a good specimen of the able, well equipped, cultured, gentlemanly lawyer.

Office, Room 22—78 Michigan Avenue.

ROBERT HERVEY.

Of all the eighteen hundred lawyers of our City, there is no one who would more readily be conceded to be a fair representative of the Chicago bar than Robert Hervey. Moreover, there is no one probably who could form a truer estimate of his own position, or who would be more willing to concede to every fellow member of the bar, the place to which he is entitled. There are some who may excel him in one direction, and others in another But he stands out as an embodiment of the sagacity, the energy, the industry, the cool determination, the fairness and the professional courtesy of the Chicago bar.

Mr. Hervey was born in Glasgow, Scotland, August 10,

1820. His father, Alexander, was a West India merchant, owning a plantation in Trinidad. Having attended the preparatory grammar schools, he entered Glasgow University, and graduated from that institution in 1837.

Shortly afterward he removed to Canada, and commenced the study of the law with Henry Sherwood, Attorney General of the Province. He was admitted to the bar in 1842, and commenced practice in Bytown, now Ottawa, the capital of the Dominion.

He soon acquired a good practice in Bytown, but that being then a small city, ere long he became restless, and began to look about for a wider field. Yielding to the wishes of an uncle, who had long been a resident of Illinois, he came to Chicago. We have heard Mr. Hervey say, also, that it was in deference to the wishes of his uncle that he has studiously avoided taking any active part in the political affairs of his adopted country.

Coming to Chicago in 1852, he became a member of the firm of Morris, Hervey and Clarkson, which continued until the elevation of Mr. Morris, the senior partner, to the bench. Mr. Hervey continued with Mr. Clarkson until 1857, when he formed, with Elliott Anthony the firm of Hervey and Anthony. In 1860, Mr. Galt was admitted to the firm, which then became Hervey, Anthony, and Galt. Both these firms had a large practice in all the courts. This copartnership continued until 1877, and it was then the oldest firm in the City.

Mr. Hervey has, during his long professional career in this City, never wanted for business, having been retained in very many of the cases of public importance both civil and criminal, which have come before the courts during that time.

He assisted in the defense of the nineteen aldermen who were indicted for bribery, of whom only one was convicted. He also defended Arthur Devine, charged with the murder of Francis McVey, one of his employees, and secured Devine's acquittal. Mr. Hervey appears to have been fortunate in his clients, in the capital cases in which he has been retained, since none of them were found sufficiently guilty to suffer the extreme penalty of the law.

In the celebrated Hoops case he was retained by the State. In the trial of the County Commissioners some years ago, he was for the defense, and in that trial, none of the defendants were found guilty. Whether they were better men than their less fortunate successors of a recent date, or more astute and successful in covering their transactions, is a question concerning which it would now be useless to speculate, and one which it might be difficult to decide.

The civil cases in which Mr. Hervey has been employed, have been too numerous to permit of mentioning even the most important. In them all he has had a good measure of success.

One case may be mentioned, which at the time attracted a good deal of attention, that of the complaining stockholders of the Galena Railway Company, who resisted the attempt to consolidate with the Northwestern. Mr. Hervey appeared for the complainants, and successfully fought the consolidation until his clients were paid the full value of their shares.

His special forte is the trial of cases before a jury. He is a good speaker and plausible debater, and has a quick apprehension of the points which will be most likely to be the winning ones. He is almost constantly engaged in trying cases, so that he may be said to live in the courts. His integrity has never been questioned.

He was one of the originators of the Chicago Bar Association, and has frequently been President of the St. Andrews Society, and Chief of the Caledonian Club.

Mr. Hervey is affable and courteous in his manners, and gentlemanly and considerate in his treatment of witnesses and opposing counsel.

He is a man of fine literary culture, and of a philosophic turn of mind. He writes occasionally for law magazines and other periodicals. Some of his eulogies upon his deceased brothers of the bar have been models in pathos and eloquence, and have been characterized by great purity of diction and adorned by all the beauties of rhetoric.

Office, Room 20—116 La Salle St.

LESTER L. BOND

The eminent patent lawyer, was born at Ravenna, Ohio, October 27, 1829. His father was Jonas Bond, a farmer of Ravenna, who had removed from Connecticut and settled in Ohio in 1824. His mother was Elizabeth Story, a relative of the distinguished jurist, the late Judge Story, of the Supreme Court of the United States.

He attended a select school in his native town for four years, and afterward entered Ellsworth Academy When eighteen years of age, he left the Academy, and assisted his father in farming and manufacturing, attending school during the winter months. It was at this time that he acquired that taste for mechanics, which in after years, determined his choice, in devoting himself to a special department of the law.

In 1850, he commenced the study of the law with Francis W. Tappen in Ravenna, and afterward continued his studies with Bierce and Jeffries.

He was admitted to the bar at Akron, in October, 1853. He now set out on a tour for the purpose of finding a good location to commence practice. He decided upon Chicago, and settled here in October, 1854.

He was married October 12, 1856, to Miss Amie Scott Aspinwall, daughter of Rev. Nathaniel W. Aspinwall, of Peacham, Vermont, a most estimable lady. They have one daughter. They are both members of the Centenary Methodist Episcopal Church.

About the year 1859, he was employed by some parties in the City who knew the bent of his mind, to take charge of their patent interests, and to procure other patents for their inventions. This business continued to increase until 1864, when he concluded to withdraw from general practice, and to devote himself exclusively to patent business. From that time, owing to the extraordinary growth of manufactures throughout the western States, Mr. Bond has been fully occupied in this branch of his professic

In 1864, he became a member of the firm of West, Bond and Driscoll, he taking personal charge of the patent business. The following year Mr. Driscoll was elected City Attorney, which made it necessary for him to withdraw from the firm. The firm name was then West and Bond, and now after a lapse of twenty-three years, the name is the same.

Though Mr. Bond would have been willing to devote himself to his profession, he was not permitted to do so. Such was his probity of character and the soundness of his judgment, that he became a favorite of the people for official position.

In politics, he has been a republican ever since he had a vote, his father having joined the free soil party in 1844. Lester L. had been a delegate to the Pittsburg Convention of 1852, which nominated John P. Hale.

In 1862, he was elected alderman of the eleventh ward of this City, and in 1864 was re-elected for two years. At the expiration of his term he was again tendered the office by both parties, but on account of the pressure of business was compelled to decline. He served another term in 1872 and 73.

In 1867, he was elected to the legislature, and re-elected in 1869. During this session he was chairman of the judiciary committee. In his first term he was a member of the committee on internal improvements, and aided largely in procuring the act for the improvement of the Illinois River; and in his second term took an active part in securing parks for the West Division of the City.

In 1873, Mayor Medill having obtained leave of absence for the remainder of his term, Mr. Bond was elected by the council to fill his place. He was thus acting mayor from July 20 to Dec. 4, 1873.

The following November he was nominated for mayor. He was defeated by Mr. Colvin, but Mr. Bond received 18,500 votes. It was in the panic of 1873, that he was acting as mayor, and by taking a decided stand against the issuing of scrip, he maintained the credit of the City. He reorganized the fire department on a satisfactory basis, and brought to a settlement the long standing claims of the gas companies.

Mr. Bond was a member of the school board from 1866 to

1870, and in 1872 was presidential elector for the second congressional district.

In all these positions he maintained himself with ability, and performed his various official duties in such a way as to secure and retain the good opinion of the community. Prudence and good judgment are his distinguishing characteristics. He enjoys the complete confidence of his clients and of his fellow citizens.

Mr. Bond has the reputation of being the leading patent lawyer of the West, and has been employed in something over twelve hundred contested patent and trade mark suits, since the fire. The number previous to the fire cannot be ascertained, as his books were burned.

Firm, West and Bond, Office 204 Dearborn St.

ABNER SMITH.

Abner Smith was born in Orange, Massachusetts, August 4, 1843, and is the fourth son of Humphrey and Sophronia A. Smith, who had moved from Massachusetts to Middlebury, Vermont, with the purpose in view of availing themselves of the advantages which the college there afforded for educating their boys, three of whom have since graduated from the institution. Abner was educated at Middlebury College, and graduated in 1866, in the same class with Judge Grinnell, of this City.

"The Undergraduate," published at Middlebury, says of him:

"When in college he was a candid, earnest, substantial and reliable young man and student, and has maintained that character to this day. He evidenced in college the possession of abilities which would enable him to rise to, and above the average in whatever profession he might follow; which he has done in the profession of law. He has never aimed at ephemeral brilliancy or signal momentary results, but a thoughtful and careful avoidance of fatal mistakes, and at permanent achievements."

After graduating he was engaged as teacher in the Newton Academy, at Shoreham, Vermont, until 1867, when he removed to Chicago, and entering the office of J. L. Stark, commenced the study of law.

He was admitted to the bar in 1868, and formed a partnership with Mr. Stark, under the firm name of Stark and Smith, which continued until terminated by the death of Mr. Stark in 1873. He succeeded in a measure to the business of Mr. Stark, and settled his estate. In April, 1877, he formed a partnership with John M. H. Burgett, which continued for a number of years. Mr. Smith is counsel for the National Life Insurance Company of Vermont, the Life Indemnity and Investment Company of Iowa, and other corporations.

He was married October 5, 1869, to Miss Ada C. daughter of Sereno Smith, of Shoreham, Vermont.

Mr. Smith, though a republican, is rather inclined to be independent in politics, expressing himself freely and independently on all the questions of the day, and voting according to his best judgment. He has taken no active part in political affairs, having devoted himself to his profession, and as a consequence has been rewarded by most satisfactory success.

His success, as may be inferred from the characteristics given him in the "Undergraduate," has been gradual and sure, every thing gained, becoming a stepping stone to further progress. Such success is not adventitious, nor is it uncertain, except in regard to degree of progress, which is sometimes accelerated by adventitious events. As certain as any other law in the natural or moral world is it, that intelligence, application to business, honor and manliness will attain an honorable position at the bar and in the community. Let the younger members of the bar not be hasty to distinguish themselves. Let them learn to labor and to wait, and their reward is sure.

Mr. Smith's Office is at Room 630, Opera House Building. James M. Cleaver has an office in connection with Mr. Smith.

WILLIAM P. BLACK

Who acquired a national reputation in the late anarchist cases, was born in Woodford County, Kentucky, November 11, 1842.

He is of Scotch descent; his ancestors having first settled in South Carolina, and afterward moved to Westmoreland County, Pennsylvania. In the revolution, they were ever found on their country's side. In those days the family was represented in Pennsylvania by Rev. John Black, a Presbyterian minister, whose son and grandson followed the same calling. The last mentioned, Rev. John Black, D. D., was the father of the subject of this sketch. One of the ancestors of William P., on the maternal side, was William Findley, for twenty years a member of the United States Senate and House of Representatives, from Pennsylvania.

William P. Black's father died in 1847, leaving Mrs. Black with a family of four children, William being then but about four years of age. She removed the same year, with her family, to Danville, Illinois. Mr. Black attributes to his mother the most of what is elevated and meritorious in his life.

He was a close student from childhood. He entered Wabash College, at Crawfordsville, Indiana, in the fall of 1860. He was now studying with reference to entering the ministry, and was already venturing upon flights of college oratory.

The outbreak of the war interrupted his college course, which was never to be resumed. On the 15th of April, 1861, Mr. Black with about forty other students of the college, including his only brother, enlisted as a private soldier in Company I, 11th Indiana Zouaves, commanded by Colonel (afterward Major General) Lew. Wallace. After a three months campaign in this regiment, principally in Western Virginia, he was mustered out as corporal.

He at once engaged in assisting the work of recruiting a company for the three years service, in Vermilion County,

Illinois. This company, of which he had been elected Captain, was mustered into service as Company K., 37th Ill. Infantry, on the 18th of September, 1861. It was then known as the Fremont Rifles.

Captain Black, who was but nineteen years of age, proceeded with his company to the front, and engaged in the active service of his country; his company being engaged in a number of important battles, among which may be mentioned Pea Ridge, Arkansas, Prairie Grove, Arkansas, where one-third of the federal forces were killed and wounded, the siege of Vicksburg, the occupation of Texas, and the observation of the empire of Maximilian. In the latter part of the siege of Vicksburg, Capt. Black held the responsible and most dangerous position of brigade picket officer, having charge of the rifle-pits of his brigade. His military service continued for three years, and resulted in a clear record for courage and devotion to duty.

In October, 1865, he commenced the study of the law in the office of Arrington and Dent, in this City, and about sixteen months afterward, was admitted to practice.

He commenced the practice of his profession at Danville, Illinois. Remaining there but a year, he returned to Chicago in March, 1868, and formed an association with the well known lawyer, Thomas Dent, of this City. This partnership was continued until a very late date. While it existed, the reputation of the firm was among the very best in the City; Mr. Dent being distinguished for sound discriminating judgment, and Captain Black for activity, tact, and skill in the despatch of the business of the office, as well as for eloquence in the advocacy of a client's cause.

Their success was commensurate with the high character of the firm, as may be attested by the records of all the higher courts, in which their names will very frequently be found as counsel.

In 1874, he received the unusual honor of the degree of Master of Arts, from the college whose course he had left uncompleted.

Mr. Black is a clear, vigorous, and earnest writer, and gives much attention to themes of vital interest. In 1881, he pre-

pared and delivered before the Chicago Philosophical Society, a lecture on "Socialism as a Factor in American Society and Politics;" a paper which was published in various forms, and attracted much attention.

A year later he delivered before the same body a lecture on "Russia and Nihilism," which has since been delivered before various other societies and printed in the "Weekly Magazine." It received a very high encomium from Wendell Phillips, in a special letter.

In politics, Captain Black is independent, favoring the socialists, and sometimes appearing as their champion. In 1872, he was in the Greeley movement. In 1882, he ran for Congress, as candidate of various parties, and was defeated by a small majority.

Mr. Black was married May 28, 1869, to Miss Hortensia M. MacGreal, of Galveston, Texas, a lady of ripe culture and strong intellect, and enthusiastically devoted to the interests of humanity.

Captain Black's defense of the anarchists is so well known to the country, that it is scarcely necessary to remind our readers of the zeal, the earnestness, the faithfulness and the ability with which he devoted himself to the interests of his clients in that case. If individual effort or forensic eloquence could have saved the prisoners they would have been saved.

Captain Black was leading counsel in the litigation which resulted in the breaking down of the royalties charged by Washburne and Moen Wire Fence Manufacturing Company, to less than one third the price claimed, and thus contributed to cheapening by about one half, the price of wire fencing to the farmers and others.

He was also retained to defend Lorenz Krug, indicted for murdering Lucy Heidelmeyer by arsenic. The case was tried about a year ago. The defense of the case necessitated, in order to cross-examine intelligently, a thorough mastery of the literature of arsenical poisons, and the analyses for the recovery of arsenic from the stomach.

Judge Baker, in passing sentence upon the prisoner, took occasion to say, that while the question involved was a close

one upon the evidence, and the case was very ably prosecuted, he had never in all his experience or observation, known a more able defense.

Captain Black is also retained as counsel in the Douglas University litigation, in behalf of the Douglas heirs. It is going by appeal to the Supreme Court.

The law offices of Captain Black are in rooms 19 and 21, 108 Dearborn St.

JOHN H. S. QUICK

Is the son of John S. Quick, (deceased). formerly an enterprising and prosperous business man of New York, and Mary Quick. He studied in the grammar school of Columbia College, New York, and at the Episcopal Academy at Cheshire, Connecticut.

He graduated from Trinity College, Hartford, Connecticut, after a full course, in the class of 1858. He then went to Europe, and attended lectures at the University in Leipsic.

After his return to New York, he read law with the firm of Scudder and Carter, consisting of H. J. Scudder and James C. Carter. He was admitted to the bar in New York City in 1862.

After practicing three years in that City, he removed to Chicago. Here he practiced by himself until 1871, when he formed a partnership with George Herbert, a lawyer of much ability.

In the great conflagration of 1871, not only was the fine partnership library consumed, but Mr. Quick lost his large personal library at the same time.

In 1876, John S. Miller was admitted into the firm, which then became Herbert, Quick and Miller, and so continued until the sudden death of Mr. Herbert, October 9, 1882. It then remained as Quick and Miller.

Mr. Quick is a well read lawyer, who is patient in the research of authorities. He possesses an analytic mind, and is a good reasoner. He has never sought public position or preferment, but has been fully absorbed in the work of his profession

and in the management of his estate. He is a gentleman of refinement and culture, and inspires those who come in contact with him, with confidence and respect.

Though he has always avoided any active participation in public affairs, yet without solicitation on his part, he has been latterly much talked of in his own party, as an eligible candidate for Congress, owing to his high standing in his profession as a lawyer of commanding ability, as a prominent member of the Iroquois Club and of the County democracy, as one of the pillars in Grace Church, a power in social and business circles, and an active and energetic man.

Mr. Quick is a man of genial and pleasant manners, with a frank countenance, and an eye that one can look into with satisfaction. He is quiet, self-possessed, unassuming, and conscientious. He possesses the fullest confidence of the bench and of the lawyers of his acquaintance.

He was married October 3, 1861, to an estimable lady, of refinement and education, Miss Henrietta B. Carter, daughter of H. Kendall Carter, of Hartford, Connecticut.

Office, 132 La Salle St.

DANIEL J. SCHUYLER

Was born in the town of Florida, Montgomery County, New York, February 6, 1839. His father, Jacob D. Schuyler, was a farmer, and was descended from the old Knickerbocker family. General Philip Schuyler, of revolutionary fame, was of the same family.

Daniel J. received his education in the schools of that section of country, and afterward in Union College.

Soon after leaving college, in 1861, he entered the law office of Hon. Francis Kernan, of Utica, New York, late United States Senator. After completing his law studies he was admitted to the bar, in January, 1864. The same month he came to Chicago, and soon engaged in practice.

"Having arrived in Chicago," he afterward wrote, in a letter

to a friend, "I rented an office, put out my shingle, and duly announced to an overcredulous public that I was a lawyer, ready to receive their patronage and immortalize both myself and such as were willing to entrust their interests to my care. This was during the late war, and while the country was prosperous, law business was very dull. Like the legendary cobbler, however, I stuck to my last, and made a little (very little) money."

This autobiography covered the most discouraging period of his practice, which afterward grew upon his hands until it attained goodly proportions. In the same letter he says that afterward he prospered beyond his most sanguine expectations.

For the last ten years he has had a good deal of practice in insurance cases.

In January, 1873, he formed a partnership with the late George Gardner, which continued until 1880, when Mr. Gardner was elected one of the judges of the Superior Court.

Mr. Schuyler then formed a partnership with George A. Follansbee. The new firm continued to do a successful business for many years.

He is a careful, thorough and painstaking lawyer. He is especially accurate in the preparation of his case, and clear in presenting it to the court and the jury. He is strictly honorable in his dealings. He is energetic, persevering and practical, with a conservative and well balanced mind.

Mr. Schuyler was married in September, 1865, to Mary, daughter of William H. Byford, a well known physician, of this City, one who has now a world-wide reputation in his profession. This marriage was a very happy one, and contributed much in various ways to his professional business. He has two children living.

Mr. Schuyler stands high in the profession, and commands the esteem of the bar, and of the community.

We know whereof we speak, also, when we say that Mr. Schuyler is regarded by the judges of this City as an able and reliable lawyer, one of the best at this bar, and one in every respect worthy of being intrusted with the management of the most important interests. One of them has said that before a

jury he is fairly the equal of any member of the profession in the City.

Firm, Schuyler and Kremer; Daniel J. Schuyler and Charles E. Kremer, Room 14, 162 La Salle St.

ALEXANDER S. BRADLEY.

Alexander S. Bradley was born at Fryeburg, Maine, Sept. 16, 1838. His father, Alexander R., was a lawyer, as was also his grandfather, on the mother's side, so that he may have inherited a tendency to the study of law. He is also a lineal descendant of Capt. Samuel Ayer Bradley, who with his brother, Lieut. Jonathan, was killed in battle with the Indians at Concord, N. H., about 1784.

His earlier education was received at Fryeburg Academy, after which he entered Bowdoin College, where he graduated in 1858. He studied law under Hon. William Pitt Fessenden, a cousin on the maternal side, and was admitted to the bar, at Portland, in 1863.

He married Harriet A. Towle, of Fryeburg, in 1864, and removed to Nashville, Tenn. in 1865. He practiced law at Nashville seven years, and was Register in Bankruptcy until his removal to Chicago, in 1872. His practice in Chicago was at first mainly in bankruptcy cases, in which his experience as Register was of service. Since the repeal of the Bankrupt Law, he has been engaged in general business, which has latterly been mostly in chancery, and as consulting counsel.

In the celebrated cases of the three street railroad compaies against the City of Chicago, Mr. Bradley was associate counsel with Hon. R. S. Tuthill, for the City.

These cases involved the right of the City to impose by its ordinance, a license tax of fifty dollars per annum on each car of the three companies. Judge Blodgett granted an injunction in favor of the companies against the City, and adhered to his opinion that the ordinance was invalid. The cases were hotly contested for several years, the best legal talent being engaged

for the companies, and Judge Drummond finally rendered an opinion in favor of the City. The companies appealed to the U. S. Supreme Court, but eventually conceded the right to license, and a new ordinance, with some modifications of the original one was passed, and accepted by the companies.

In the latter part of 1880, Mr. Bradley undertook the task of arousing public sentiment in regard to the encroachments of the Illinois Central R. R. Company, on the lake front of Chicago. In pursuance of this object he prepared a pamphlet, which was extensively circulated, and aided Hon. Geo. R. Davis, representative from the West Side, in opposing the plans of the railroad corporation, in Congress and in the Departments at Washington. The matter being taken up by many leading citizens of Chicago, Mr. Bradley and Hon. J. K. Edsall were employed as counsel for the citizens to assist the attorney-general in the well known Lake Front cases, lately decided by Justice Harlan in favor of the people.

Mr. Bradley is a man of fine literary attainments, and is accustomed to clear and logical methods of thought. His mind is of a philosophic cast, predisposed to abstract reasoning, and to the consideration of general principles. He is a great admirer of Herbert Spencer, and is one of those who can fully comprehend and thoroughly appreciate the entire course of reasoning of that great thinker. He is direct and straightforward both in thought and action, opposed to cant, hypocrisy or indirection. Having nothing of the kind in his own composition, he cannot tolerate it in others. Of a nature somewhat intense, and of a sanguine nervous temperament, when he engages in any thing he takes hold of it with all his might, and enlists in it all his energies. Hence his opponents in a case will find him a hard fighter.

But out of court they will meet the kind, courteous, genial gentleman. It is well known that the members of the bar do not, when the particular conflict has passed, indulge in those personalities and harbor those resentments which are sometimes to be seen in other professions. This peculiarity of attorneys is well illustrated in the case of Mr. Bradley.

Office, 126 Dearborn St.

HENRY BOOTH.

Judge Booth was born at Roxbury, Connecticut, August 19, 1818. He worked on his father's farm until he was seventeen years old, attending the district school in winter. The next year he attended an academy in Roxbury, and prepared for college. He was admitted to Yale College in the fall of 1836, and graduated in the class of 1840, ranking in scholarship among the first twelve in a class of ninety-nine.

During his college course and afterward, he worked on the farm in vacations.

After leaving college he took charge of an academy at Wellsborough, Pennsylvania, which he conducted for a year. Returning home in the fall of 1844, he studied law at Litchfield, under the instruction of Origen S. Seymour. The next spring, to improve his health and strength, he again went on to the farm.

In the fall of 1842, he entered the law school at New Haven, where he pursued his studies for two years. He graduated from the law school, and was admitted to the New Haven Bar.

In May, 1844, he went to Harrisburg, Pennsylvania, and located, in September following, at Towanda, Bradford County. There he continued in practice twelve years. Among his associates at that time, were David Wilmot, of "Proviso" memory, W. Elwell, afterward circuit judge of the Northampton Circuit, D. Morrow, judge of the Bradford Circuit, and U. Mercur, subsequently upon the supreme bench of that State. Mr. Booth was for three years prosecuting attorney for Bradford County.

In October, 1846, he was married to Ellen, daughter of Hon. Samuel W. Morris, of Wellsborough, Pennsylvania. He has three sons and three daughters.

In May, 1856, he accepted a professorship in the State and National Law School at Poughkeepsie, New York, and removed to that city, where he remained in discharge of his duties as professor, and in practice, until the fall of 1859.

Mr. Booth then received an invitation from the University of Chicago, to come to this City, and assist in the organization of a law department for that institution. From that time he had the principal, and for much of the time sole charge of that department, devoting much of the time, three to four hours a day, to the work of instruction, the business being conducted, so far as practicable, before and after the usual office hours.

For the first two years after accepting this appointment, he paid no attention to practice, devoting his time and attention wholly to building up the Law School of the University. In the spring of 1862 he formed a law partnership with Mr. H. B. Hurd, who had been employed in revising the statutes of Illinois. This partnership continued until a short time before his elevation to the bench, during all of which time he was engaged in active and successful practice at the bar.

In 1870, he was elected one of the judges of the Circuit Court of Cook County. As a judge, he brought to the bench a very wide range of legal scholarship, a clear and judicial mind and a quick and cultivated sense of justice.

In 1873, he was re-elected for six years. His politics have uniformly been republican, but he has never been a political partisan. His political opponents were in his case quite willing to ignore their party predilections, and both parties united in continuing him in the position which he had so ably and so worthily filled.

While upon the bench, he read before the Philosophical Society of Chicago, a paper upon "The Resurrection of Jesus." He subjected the accounts of the four evangelists concerning that event, to the most rigid examination and analysis; and testing them by the rules of evidence, and of logic, came to the conclusion that they were unworthy of credence. This conclusion, arrived at, in the first place, without reference to the nature of the event, he considered much strengthened by the inherent improbability of such an occurrence. When it is remembered, that the currents of influence over the public mind were nearly all in favor of an opposite view—that the salaries of hundreds of ministers of the gospel were involved, all of whom had their admirers and devoted adherents—that the lecturer was

holding a lucrative public office, and that his financial position was not such as would enable him to look at the perquisites of the place with indifference, the moral courage evinced in reading such a paper under such circumstances, cannot easily be overestimated.

At the next election Judge Booth was defeated, but under such circumstances that it is difficult to tell how much the result may have been effected by the reading of the paper referred to. He ran largely ahead of his ticket, and such was his popularity with the bar, and among the masses generally, it is very probable that but for the hostility which he had aroused in the religious element, he would have been elected. At all events, be the cause of his defeat what it may, it is certain, that when he read the paper he looked probable defeat in the face.

He has been actively connected with the Chicago Athenæum and its lectures, and with the Society for Ethical Culture, of which he is now the President. His mind is open to the truth from any quarter, and he wishes it distinctly understood that he must not be considered obligated to believe to-morrow what he believes to-day.

His connection with the law school still continues; he being the dean of the faculty. To his popularity as an instructor, and the high estimation in which he is held by the students and the faculty, is attributable largely the growth and success of the Law School, now one of the principal institutions of the kind in the country. His style of speaking is graceful and his manner easy, and his lectures and instructions are marked by great clearness and a thorough acquaintance with the principles of law.

His firm at the present time is Booth & Booth, consisting of Henry Booth and Samuel M. Booth. Office in the Opera House Building.

JOHN S. MILLER.

Mr. Miller was born at Louisville, St. Lawrence County, New York, May 24, 1847. His home was on the banks of the St. Lawrence, and here he passed his boyhood. He studied law at Canton, New York, in the office of Sawyer and Russell, composed of Hon. W. H. Sawyer, late Judge of the Supreme Court of New York, and Hon. Leslie W. Russell, late Attorney General of the State of New York. He studied also at the Law School of St. Lawrence University, at Canton. He was admitted to the bar at Ogdensburg, N. Y., in November, 1870.

Mr. Miller graduated at St. Lawrence University, at Canton, N. Y., in 1869. In 1870, he was given the chair of Professor of mathematics in that institution to succeed Prof. N. White, the present President of Lombard University at Galesburg, Ill. Mr. Miller occupied this position for one year, and was then given the Professorship of Latin and Greek, in the same institution, which he held until the spring of 1874, when having chosen the profession of law, and in the meantime having been admitted to the bar, he resigned his position in St. Lawrence University, and came to Chicago and entered upon the practice of his profession.

He became a member of the firm of Herbert, Quick and Miller, and upon the death of Mr. Herbert in 1882, he remained a member of the firm of Quick and Miller until 1886, when he formed his present firm of Miller, Leman and Chase.

Mr. Miller was from 1876 to 1883, one of the counsel in the "Flagler Litigation," which involved large interests and very intricate questions, extending over from 1869 to 1883, in the courts of Illinois, and in the Circuit and Supreme Court of the United States, and was characterized by Judge Blodgett as one of the most determined legal contests in the judicial history of Illinois. In November, 1882, he argued the last of these cases, Flagler Gay v. Parpart, in the Supreme Court of the United States.

Upon the death of his senior partner, Mr. Herbert, in October, 1882, Mr. Miller succeeded to the management of the Riverside Cases, (Chicago & Great Western R. R. Land Co. et al. v. Peck et al.,) then pending on a writ of error, in the Appellate Court of Illinois; and in 1882 and 1883, argued these cases on behalf of the appellants in the Appellate and Supreme Court of Illinois, and procured a reversal of the decision in the Supreme Court. (See 112th volume Ill. Reports.)

Opposed to him were very able and distinguished counsel, including Lyman Trumbull, B. C. Cook, Lawrence, Campbell & Lawrence, Gen. Geo. W. Smith, W. R. Page and Jonas Hutchinson. These cases determined the rights and liens of the creditors of the Riverside Land Companies and of purchasers from said Companies and involved about one thousand acres of land in the suburban village of Riverside. They were cases of peculiar intricacy and difficulty.

In the spring of 1884, Mr. Miller was retained as counsel with Col. Robert Rae, for Mrs. Elizabeth Ann Phillips in the litigation known as the South Park—Phillips—Kerr litigation.

Shortly afterward, the case was brought to a hearing before Judge Tuley in the Circuit Court, Col. Rae and Mr. Miller representing Mrs. Phillips, Melville W. Fuller representing the South Park commissioners, Gen. J. K. Edsall, Gen. John B. Hawley, H. S. Monroe, E. A. Sherburn and General Stiles representing other opposing interests. It resulted in a decree awarding to Mrs. Phillips compensation for 34,17-100 acres of the lands making up Jackson Park; and this decree was affirmed in the Supreme Court. On subsequent hearing, Judge Tuley fixed the amount to be paid by the Park Commissioners to Mrs. Phillips as the value of the land, and interest, at $110,941.18, and this has lately been affirmed by the Appellate Court, and the money paid over by the Park Commissioners.

Mr. Miller is quiet and unostentatious in manner, cool, careful and deliberate, with a clear and well balanced mind. He has all the qualities calculated to place a lawyer in the front rank in the profession, and they have already done that service for Mr. Miller. In a late case when a question was raised as to the proper amount to be charged for his services in the Supreme

Court, there was occasion to take the opinion of leading lawyers on that question, and the position at the bar which was given him by the witnesses, must have been as gratifying as it was deserved.

Among the witnesses were such men as Melville W. Fuller, and Lyman Trumbull. The opinion of Judge Trumbull was also very significantly, though not formally expressed, on another occasion.

It was when the Riverside cases came back from the Supreme Court. They had originally been heard before Judge Williams, in 1876. In 1885, they were decided in the Supreme Court, and sent back to the Circuit Court for further proceedings. When the cases came up before Judge Tuley, Judge Trumbull, though he was of counsel opposed to Mr. Miller, requested the Court to have Mr. Miller state the facts, inasmuch as he had made such a clear and satisfactory statement in the Supreme Court.

It is difficult to conceive how any higher compliment than this could have been paid to a member of the Chicago bar.

Firm, Miller, Leman and Chase; John S. Miller, Henry W. Leman, and Benjamin F. Chase. Office, 97 Clark St.

FRANK S. WEIGLEY

Was born at Galena, Illinois, April 4, 1854. His father was Wellington Weigley, who was for forty years a prominent lawyer in Galena, and had a large and lucrative practice. He was a partner of John N. Smith, and of the late E. A. Small.

Frank S. attended the common schools of Galena, Illinois, and Dubuque, Iowa, and during the years 1871 and 1872 studied at Hamilton College.

After leaving Hamilton, he entered his father's law office as a student, and after remaining there one year, moved to Omaha, Nebraska, where he studied in the office of E. F. Smythe, a prominent lawyer of Omaha.

In the fall of 1874, he was admitted to the bar of Nebraska,

and the following year to that of Illinois.

He was employed as a short-hand reporter in the courts until 1876, when he commenced practice, as assistant to John M. Rountree, County Attorney. Two or three years later, after this engagement had been concluded, he began the practice of the profession on his own account.

He soon acquired a large commercial practice which he still retains, but he does not now confine himself to any specialty.

In the fall of 1876, Mr. Weigley was retained by Hon. C. B. Farwell, acting in behalf of a committee of gentlemen of this City, to investigate the charges of official corruption in county affairs; Mr. Farwell having taken this step after consultation with C. A. Snowden, of "The Mail," and others. Mr. Weigley remained counsel for the committee until the indictments had been returned, and the proof placed in the hands of the State's Attorney. It was Mr. Weigley's office, in the Chicago Opera House Block that the "boodlers" entered on the night of Feb. 16, 1887, for the purpose of procuring the proof locked up in his vault. They were successfully resisted by the detectives in charge.

In the settlement of the litigation connected with the Chicago Times and the estate of the late Wilbur F. Storey, Mr. Weigley represented the purchasers of the Times. Mr. Goudy represented the heirs, Judge Trumbull and Wirt Dexter, the widow.

Mr. Weigley is a member of the Union League, and of various political clubs. Politics, republican.

He was married in 1879, to a daughter of the late Dennison Card, of Rochester, New York, who for several years, during Lincoln's administration, served as a diplomatic agent of the United States in South America.

Mr. Weigley has attained an extensive general and commercial practice, and a good standing at the bar and may be looked upon as one of the rising men of the profession. During the last few years, he has had charge of some very heavy cases of a commercial character, running into the hundreds of thousands.

His two partners and a large corps of clerks are kept constantly busy.

Office, Home Insurance Building, 205 La Salle St. The firm

is Weigley, Bulkley and Gray, the other members being A. W. Bulkley and Edward E. Gray.

JOHN BARTON PAYNE.

The ancestors of Mr. Payne may be traced back to the time of the reign of Charles I. about the year 1640, when one of them came from England to the Colony of Virginia. The family of Paynes is extensive, scattered over Virginia, West Virginia, and other southern States.

Francis Payne, the great-grandfather of John Barton, was an American officer in the revolutionary war. His grandson Amos was a graduate of Transylvania University, and became a physician. He removed to Pruntytown, Virginia, where John Barton was born, January 26, 1855.

His youth was spent at Orlean, Fanquier County, Virginia. The facilities for instruction were poor in that region, but by the fall of 1870, he had acquired a fair English education.

In 1874, he went to Pruntytown, and engaged as assistant clerk of the courts of Taylor County, studying law while not engaged at his duties in the office.

Early in 1876, he completed his law studies, and in August passed an examination before three judges, and was licensed to practice law. He immediately commenced practice, appearing in defense of a criminal in the Circuit Court of Taylor County, in September, of the same year in which he was admitted.

He took an active part in the presidential campaign of 1876, stumping the County for Tilden and Hendricks, and was made acting chairman of the democratic county committee. He was delegate also from Taylor County to the Senatorial and Congressional conventions.

In March, 1877, he removed to Kingwood, Preston County, West Virginia, and located there for the practice of his profession. He entered at once into a good practice, and was soon retained in most of the important cases.

In 1878, he was elected chairman of the democratic executive

committee of Preston County, which position he held for several years. The same summer he was chairman of the Preston delegation in the democratic congressional convention.

Mr. Payne was married to Miss Kate Bunker, on the 7th of October, 1878.

He continued to take an active part in politics—was temporary chairman of the Grafton convention which elected delegates to the National Democratic Convention of 1880—chairman of the Preston delegation in the Fairmount congressional convention—a member of the congressional executive committee, and a delegate to the Martinsburg State convention. There he supported Hon. Charles J. Faulkner for Governor. He was tendered the position of presidential elector, but declined.

In the presidential canvass which followed, he took a very active part, making speeches in favor of Hancock in West Virginia and Pennsylvania.

In May, 1881, he was elected by the bar, special judge of the Circuit Court of Tucker County, to decide a chancery cause to which the regular judge was a party.

Mr. Payne was engaged as counsel in a number of cases of much importance. In 1878, he raised the question whether an act of the State legislature, providing that the chattel exemption should not be claimed as against a landlord, was valid; Mr. Payne claiming that the law was unconstitutional. He obtained an injunction from Judge Brannon, on that ground, and the injunction was sustained in the Circuit Court. The case went to the Supreme Court of Appeals, where it was fully argued by Mr. Payne, in June, 1880, when the judgment was affirmed.

In January, 1882, he was elected Mayor of Kingwood. After retiring from this position, he removed to this City, and here opened a law office. After practicing for a few years, he formed a connection, August 1, 1887, with his present partner, Gilbert E. Porter. The firm is engaged in a general common law and chancery practice.

When it is noticed that when Mr. Payne came to Chicago he was but twenty-seven years of age, it will be seen that his

career had been one of exceptional brilliancy.

When a young lawyer first comes into a city of nearly a million of inhabitants, and becomes one of a bar which has begun to count its numbers by the thousand, he must expect to become temporarily lost from view. But when one has had such antecedents, the qualities which have given him prominence elsewhere, will eventually bring him to the surface, and accordingly we are already hearing from Mr. Payne in some of the more prominent cases toward which the public attention is directed. Mr. Payne has not been in haste to attract attention, and there is no danger that any prominence he may attain will be lost.

The Office of Payne and Porter, is at 164 Dearborn St.

ROBERT EDWIN JENKINS.

The subject of this sketch, is a well known lawyer and citizen of Chicago.

He was born in Clark County, Missouri, February 6, 1846. His mother having died when he was but eight months old, he was taken by a sister of his father to Fairfield, Iowa, where he spent his early boyhood. Here he attended the common school until he was twelve years of age, when he went back to his father's home in Missouri.

There his life was that of a farmer's boy, doing the rugged work in summer and attending school in winter.

At the age of nineteen he entered Illinois College, at Jacksonville, intending to take the full course, but changing his plans, he removed to Chicago, and entered what is now known as the Union College of Law; took the full course, and graduated with the class of 1867. Soon afterward he was admitted to the bar. After spending about a year in the office of Haines and Story, he accepted a position with Hon. Lincoln Clark, Register in Bankruptcy. Here he made the most of the opportunities afforded him for mastering the principles and practice of bankruptcy law, and after spending a year as clerk in

charge of the office of the Register, he began practice for himself.

He announced his readiness to do a general law business, but with the intention of devoting himself especially to bankruptcy matters. His business was much increased by his being appointed during the succeeding years, assignee in bankruptcy in more than twelve hundred cases.

Though the law was repealed in 1878, such was the extent of business that accumulated on his hands, that he was largely engaged in settling and disposing of it for several years afterward.

Millions of dollars passed through his hands, in this bankruptcy business, but so far as we have been informed there never was cause of complaint or dissatisfaction on the part of those interested in its distribution.

This is a practical test of capacity and integrity, of which Mr. Jenkins may well be proud.

This career of Mr. Jenkins during these years illustrates and enforces what has elsewhere been advocated in these sketches, the importance and propriety, if not the absolute necessity of an attorney devoting the most of his time and energies to some one department of the law.

In this case, of course, which was an exceptional one, the special practice had to be discontinued, and Mr. Jenkins turned his attention to the general practice, but more particularly to the law of real estate.

In this, as before, he has been successful. He is an excellent office lawyer, a good manager, writes a strong brief, and as a rule endeavors to settle difficulties when any honorable and fair way opens, rather than to promote litigation.

For nearly five years he has been in partnership with E. J. Harkness under the style of Jenkins & Harkness, and he and his partner have done and are doing business for many of the leading men and corporations of the City.

He is treasurer of the Chicago Bar Association, member of the Executive Committee of the Chicago Law Institute, and of the Committee on Admissions of the Illinois State Bar Association.

In politics, Mr. Jenkins is and has always been an active Republican. He cast his first vote for General Grant for President in 1868. He has never sought, and until last year has always refused to be a candidate for office. Corruption among some of the officials of Cook County had so incensed and aroused an outraged people, that a number of those guilty had been convicted of their crimes and sent to the penitentiary. In response to the urgent demand for honesty and efficiency in the administration of county affairs, a new Board of Commissioners of Cook County was elected in the fall of 1887. Mr. Jenkins is a member of this body. He is chairman of its finance committee, where his experience and ability have been especially valuable to the public in adjusting various claims against the County, which arose under the old boodle regime.

Mr. Jenkins is a working Christian.—He has been a deacon in the Union Park Congregational Church since 1873, and for eight years past the Superintendent of its Sunday School. The attendance of the latter has doubled during that time, and it now numbers more than one thousand members.

He is President of the Chicago Congregational Club, a Director in the Chicago City Missionary Society, and an officer in more than a dozen different organizations.

He is also a loyal member of The Irving, a select literary club, of which he is very fond.

Sept. 2, 1869, he married Miss Marcia Raymond, daughter of Edward Raymond, formerly of Cambridge City, Indiana. Five children have been born of this union, of whom three survive, George Raymond, Helen Mary, and Edith Daisy.

Mr. Jenkins is a man of pleasant, genial manners, and has hosts of personal, warmly attached friends.

The office of Jenkins and Harkness is at 89 Madison St.

[We have commenced in this number a series of short biographical sketches of representative members of the Chicago Bar.—These sketches will embrace about one hundred and fifty names of lawyers, prominent in the various departments of the profession. Ed.]

THE BENCH AND THE BAR.

A judge requires learning, integrity, industry, patience courtesy, and unruffled temper. While not insensible to public esteem, he should disdain to court popular applause. He should be one whose firm purpose is to declare the law without fear, favor, or affection, who looks for his highest reward in his own conscience and in the veneration that will accompany him through life and follow him weeping to the tomb.

And to us, members of the bar, not only should our bearing toward the court tell our disposition, but it should indicate to the assembled citizens the deference due to those selected to expound the law and administer justice. We should be indulgent to their imperfections and peculiarities of temperament. They grow weary. We of the bar, when our case is argued or trial over, can leave the presence, the burden lifted from our brain; yet with the judge, the ending of one cause is but the beginning of another.—*Daniel Dougherty before the New York State Bar Association.*

WOMAN IN LAW.

The first woman attorney at law, in this country, was Margaret Brent, of Maryland. On order of court, made January 3, 1648, she was admitted to the bar as the attorney of Lord Baltimore, the Lord Proprietary of the Province. History records that she exercised her attorneyship with great energy and ability. Before her admission, however, she had not been a regular student of law. The first American woman to be admitted to the legal profession on proper prosecution of law studies, was Arabella A. Mansfield, of Mt. Pleasant, Iowa. This was in June, 1869. Since her admission nearly one hundred other American women have been admitted, two of whom are colored. A large number are law school graduates.

The first American law school to open its doors to women was that of Washington University, at St. Louis. This school granted the application of Phebe Cousins for admission in December, 1868. Now, nearly all law schools of the United States freely admit women when applied to for that purpose. Among those still refusing are the law departments of Yale, Harvard, Columbia, and Georgetown Universities, and Columbia College.

As to the relative standing of the sexes as students in law schools, Hon. Henry Wade Rogers, Dean of the University of Michigan, Department of Laws, in a letter dated the 11th inst., says: "The women who have attended the law school have compared favorably in the matter of scholarship with the men. They are just as capable of acquiring legal knowledge as men are."

Hon. Henry Booth, Dean of the Union College of Law, Chicago, in a letter of the 12th inst., reports the standing of women in scholarship as that of a fair average and says: "We discover no difference in the capacity of the sexes to apprehend and apply legal principles. We welcome ladies to the school and regard their presence an advantage in promoting decorum and good order."

Women of this country, on application, are now generally admitted to the legal profession without objection, the statutes being liberally construed for the purpose of their admission, where there has been no special enactment. When admitted they are entitled to practice before all courts, State and national, the same as men are. Of their admission in the early days of the innovation, Ellen A. Martin, of the bar of Illinois, in an able article on "Admission of Women to the Bar," published in the Chicago *Law Times*, November, 1886, says: "Women were admitted on their first application without anything in the law specially requiring it, in Iowa, Missouri, Michigan, North Carolina, Utah, District of Columbia, Maine, Ohio, Wisconsin, Indiana, Kansas, Connecticut, Nebraska, Washington Territory, and to the United States Circuit and District Courts in Illinois, Iowa, and Texas. In Wisconsin and Ohio when, after some women had been admitted, others were refused by other judges, the Legislatures at once passed laws forbidding their exclusion. In Illinois, California, Minnesota, Massachusetts, Oregon, New York, the United States Supreme Court and Court of Claims, the courts would not admit women until laws were passed providing for it, and in all cases, unless it be Oregon, the Legislatures promptly passed them.

"In Congress the law was delayed for a time, the Judiciary Committee of the Senate holding that no special legislation was necessary; that the United States courts already had sufficient authority to admit women. In Pennsylvania the admission of women has finally been under the original law passed in 1834 for the admission of 'persons.' The first time the matter could be acted upon by the Supreme Court of Pennsylvania it acted favorably."

Women, anxious for admission, were the first to advocate

these enabling acts. It is especially interesting to read of the able efforts made by Myra Bradwell for admission in Illinois, the exertions of Belva A. Lockwood in securing an act of Congress to enable women to be admitted to the United States Supreme Court, and of the twelve years struggle of Carrie Burnham Kilgore for admission to the courts of Pennsylvania.

Under this innovation, twenty-one law firms have been established, in which husband and wife constitute the firm.

Frequent applications are made by young women to become law students in offices, especially of women lawyers. Many are working their way into the profession, some as stenographers and type-writers in law offices, others as court reporters.

Clara S. Foltz and Laura De Force Gordon, of California, won legal repute before admission, by the able handling of their mandamus case to compel the opening of the Hastings College of Law to women students.

Belva A. Lockwood, of Washington City, the first woman to be admitted to the United States Supreme Court and Court of Claims, is successfully practicing before these highest courts of our land.

Clara S. Foltz and Helen M. Gougar delivered able legal addresses before the students of "Union College of Law," in 1886.

Catharine G. Waugh, a graduate of "Union College of Law," is Professor of Commercial Law in the Rockford (Ill.) Commercial College.

Several women lawyers have received court appointments as examiners in chancery and examiners of applicants for admission to the bar, and have acted acceptably in these capacities. Emma Haddock, of Iowa City, in June, 1878, was appointed by the Supreme Court of Iowa to examine students of the State University for graduation and admission to the bar. She was re-appointed for two successive years following.

Women have been elected as justices of the peace, and are capably acting in that capacity in Kansas and Wyoming Territory.

Several able articles have been written for law-journals by women lawyers of this country. Of books, M. B. R. Shay, of

Streator, Ill., is author of "Students' Guide to Common Law Pleading," (published in 1881.) Of this work, Hon. R. M. Benjamin, Dean of Law Faculty, and Hon. A. G. Kerr, Professor of Pleading of Law Department of the Illinois Wesleyan University, say, as published in Callaghan & Company's annual catalogue of law books:

"We have examined with considerable care Shay's Questions on Common Law Pleading, and can cheerfully recommend them to students as admirably adapted to guide them to a thorough knowledge of the principles of pleading as laid down by those masters of the system, Stephen, Gould, and Chitty.'

Mrs. Shay graduated from the Bloomington Law School in 1879. She won the prize of $100 for the best examination in her class, and was the valedictorian.

Lelia J. Robinson, of Suffolk (Mass.) bar, is author of "Law Made Easy,"—a book for the people, (published in 1886). Of this work Hon. Charles T. Russell, professor in Boston University Law School, says. "For the end proposed, the information and instruction of the popular mind in the elements of law, civil and criminal, I know of no work which surpasses it. It is comprehensive and judicious in scope, accurate in statement, terse, vigorous, simple and clear in style. My gratification in this work is none the less that its author is the first lady Bachelor of Laws graduated from our Boston University Law School, and that she has thus early and fully vindicated her right to the highest honors of the school accorded her at her graduation." Chief-Justice Stone, of Alabama, who has been on the bench there for forty years, recently gave a most enthusiastic opinion of this book. Many commendations have been received from brother lawyers by the authors of these works.

Myra Bradwell is editor of the *Chicago Legal News*, one of the most noted law journals of this country, which she founded in 1868. She is the president of one of the most extensive law book publishing companies in the United States.

Catharine V. Waite, of the Illinois bar, edits the *Chicago Law Times*, which she established in 1886, and publishes quarterly, "for the discussion from a legal stand-point of the great

questions which interest the community." This journal is receiving widespread recognition for its legal worth.

The first association of women lawyers is called "The Equity Club." This was organized in October, 1886, by women students and graduates of the law department of Michigan University, having for its object "the interchange of encouragement and friendly counsel between women law students and practitioners." It is international in scope. Each member is required to contribute a yearly letter, "giving an account of individual experiences, thoughts on topics of general interest, and helpful suggestions," for publication and distribution among members of the association. Last year sixteen letters were contributed. "The Equity Club" has a membership of thirty-two—Letitia L. Burlingame, President; Martha K. Pearce, Corresponding Secretary.

Another association of women lawyers recently organized is the "Woman's International Bar Association," having for its object—

1. To open law schools to women.
2. To remove all disabilities to admission of women to the bar, and to secure their eligibility to the bench.
3. To disseminate knowledge concerning woman's legal status.
4. To secure better legal conditions for women.

President, Catharine V. Waite, Chicago, Ill.; General Secretary, Ada M. Bittenbender, Lincoln, Neb.; General Treasurer, J. Ellen Foster, Clinton, Iowa; Secretaries—Great Britain, Eliza Orme, London; Italy, Lidia Poet, Turin; Russia, Madame Evreninova, St. Petersburg; Switzerland, E. Kempin, Zurich; Hawaii, Almeda E. Hitchcock, Hilo; United States, Lelia J. Robinson, Boston.

Women lawyers are welcomed as members of bar associations by our brothers in the profession. But few have availed themselves of this privilege.

For various reasons quite a number of women admitted have not, so far, identified themselves with law practice. Others, after winning a considerable degree of eminence, have allowed themselves to be drawn almost entirely away from the practice

into temperance and other reform movements; but the greater portion at once settled down to follow their chosen pursuit with no deviation, and are ripening into able, experienced lawyers, and winning their fair share of clientage. Some confine themselves mainly to an office practice, seldom or never appearing in public advocacy; others prefer court practice to office work. Those who enter the forum are cordially countenanced by brother lawyers and acceptably received before court and jury. As a rule they are treated with the utmost courtesy by the bench, the bar and other court officers.

Woman's influence in the court room as counsel is promotive of good in more than one respect. Invectives against opposing counsel so freely made use of in some courts, are seldom indulged in when woman stands as the opponent. And in social impurity cases, language, in her presence, becomes more chaste, and the moral tone thereby elevated perceptibly. The rule, "No smoking in the court room," is better observed. And those members of the bar who have a habit of sitting with elevated heels, assume a more becoming position, either out of deference to woman's presence or because of a hint from the bench to take their heels down.

But there should be one more innovation brought into general vogue, that of the mixed jury system. When we shall have both women lawyers and women jurors to assist in the trial of cases, then, and not until then, will woman's influence for good in the administration of justice be fully felt.

In Wyoming and Washington Territories the mixed jury system has been tried and found perfectly practicable and highly satisfactory to all except evil doers.

English women began the study of law with a view of practicing, before American women. The *British Medical Journal* is quoted as saying, in 1867, that more English women seek for admission to the bar than for entrance into medical practice. But while those who have sought have been permitted to qualify for and practice as attorneys at law and solicitors in chancery, they have not been permitted to become barristers at law and exercise the rights of that rank in the prosecution of their cases. The reason for this lies in the fact that women are de-

nied admission to the four Inns of Court, which are the only places where barristers are trained and ranked. These Inns of Court are voluntary societies from whose power to reject applications for membership there is no appeal.

Of legal works by our English sisters, only two have come to my notice, "Trial by Jury, the Birthright of the People of England," by Arabella Sheddon (published in 1865), and "A Brief Summary, in Plain Language, of the most Important Laws of England Concerning Women," by Barbara L. S. Bodichon (published in 1869). These are reputed able works.

"Women and the Practice of the Law," by Lidia Poet, our Italian sister attorney, "discusses the question of woman's right to practice law as it has recently presented itself in Italy." Under "The Educational Law" of 1876, which "opened the doors of the University of Italy to women, and thereby enabled them to obtain academic degrees in law," Signora Poet "completed the university curriculum in law, and having assiduously attended courts, and otherwise complied with legal requirements, was admitted to the Society of the Bar of Turin." But her sex precludes her from practicing. In speaking of her case, the *American Law Review* says: "In view, however, of the strong support which the claim of Signora Poet has found among the best and ablest lawyers in Italy, we think it likely that the ability, zeal, and learning displayed by the author of this pamphlet ('Woman and the Practice of Law') if turned in the direction of amendatory legislation, would put a woman's right to practice law in Italy beyond cavil."

I am told that Signora Poet, while waiting for legal recognition of her right to practice, is occupying a professorship of law in the University of Bologna.

A few years since an attempt was made to admit women to the legal profession in Russia. A Russian lady, writing on the subject, says: "After the reforms in our judiciary and the establishment of the order of advocates, some law offices employed women. Professors were invited to lecture on law before the women courses at St. Petersburg, and some women went abroad to study the science in foreign universities. But the government forbade lawyers to accept their services as clerks, and the

movement was nipped in the bud. * * * The law society of St. Petersburg counts among its members Madame Evreninova, who took her degree of Doctor of Law at Paris." But because of her sex she is denied the right to practice.

In gleaning facts for the purpose of showing what has been accomplished by women in the legal profession, I addressed the ministers of foreign legations in the United States, asking about woman's opportunities for studying and following this profession in the countries represented by them. From the answers which gave information I extract the following:

"Women in France may attend the lectures given at the law schools, but so far they cannot be admitted as attorneys and, therefore, cannot practice the legal profession." "Women are admitted to the law schools of Sweden and Norway; but so far as known to me, no demand for admission to the legal profession has as yet been made by a woman in the said countries." "In the Austrian-Hungarian Empire, women are not admitted to the law schools, and can therefore, not exercise the legal profession." "In Denmark, women are not admitted to the legal profession, and so far as I know, no female student ever frequented our only law school at the University of Copenhagen."

"There is neither a case of a woman entering the law schools nor following the legal profession in Brazil." "Never heard of any woman having graduated as a lawyer in Mexico." "In Germany, women are—at least at some universities—admitted to the regular courses and lectures; but they are so far as my knowledge reaches, never admitted to the exercise of the legal profession."

"There is no prohibition in the Argentine Republic in regard to the admission of women to the law schools or to the practice of law, but up to the present time none have been admitted to either." "I know only of one Swiss lady who studied law, Mrs. E. Kempin, who was a student of the university of Zurich from 1884 to 1887, and who acquired the title of Doctor of Law, with great distinction in 1887.

"But the laws of the Canton of Zurich prevent Mrs. Kempin entering the bar of this Canton.

"Her address is Frau Doctor Kempin, Flurnbern, Zurich, Switzerland." "I do not know of any woman having been admitted to the legal profession in the Hawaiian Kingdom, though I do not think there is any legal obstacle to such admission. A young woman from Hawaii, the daughter of one of our circuit judges, is studying law at the University of Michigan with the view of practicing in Hawaii."

We are anticipating that the outcome of our "Woman's International Bar Association" will be concerted action all along the line to open the doors of law schools still closed against women students, and to secure the right of admission to all ranks of the profession for our legal sisterhood in other lands.

We believe women are not only as capable of learning and applying legal principles as men, but also are as capable of practicing successfully in the court room, and are as well fitted by nature for doing so as men. This we know is a very advanced position to take, but are not women as well qualified for judging of minute details as men? Are not women as persistent in effort? Are they not endowed with as much power of endurance? Great physical strength is not required. Is not woman's sense of justice as fully developed? Is not her intuitive faculty as alert? And are not these the qualities essential to fit one for the practice of the legal profession?

There has not been time enough yet for a woman to develop into an Erskine or Burke, an O'Connor or Curran, a Webster or Choate. But few men have done so if history correctly records. But woman has made a fair beginning and is determined to push on and upward, keeping pace with her brother along the way until with him she shall have finally reached the highest pinnacle of legal fame.

Ada M. Bittenbender.

Department of Medical Jurisprudence.

PROCEEDINGS OF THE MEDICO-LEGAL SOCIETY OF CHICAGO.

A regular meeting of this society was held at the Grand Pacific Hotel, March 3, 1888. President E. J. Doering, presiding. There were 35 present. Upon recommendation of the executive committee, Dr. Oscar J. Price, Dr. Eugene W. Whitney, Dr. Jas. G. Kiernan, and Samuel W. Jackson, Esq. were elected active members of the society.

Dr. Jas. H. Etheridge read a very interesting paper on "Certain remarks made in Medical societies, by physicians," in which he condemned the tendency of physicians to go to extremes in their assertions in connection with new theories, as yet remaining undemonstrated to certainty. Drs. Parkes, Gapin, Mc Arthur, Hoag, Earle and Steele discussed the subject at length.

Dr. L. L. Mc Arthur read a paper on the medico-legal aspect of Pott's fracture—which was discussed by Drs. Owens, Andrews, Hoadley and Gapin. In accordance with the provisions of Art. III., Sec. 5, of the constitution, the President appointed Dr. E. B. Weston and Dr. H. T. Byford an auditing committee to examine the treasurer's accounts and report at the next meeting of the society.

The society then adjourned.

SCOTT HELM, Secretary.

An article by Dr. James G. Kiernan, on Validity of Motive as Evidenc of Sanity in Criminal Cases, has been received, and will appear in our nex issue.

Editorial Department.

NOTES OF TRAVEL.

GERMANY AND AUSTRIA—NINE MONTHS SOJOURN IN VIENNA.

On the 8th of December, 1884, having had a very agreeable visit with Bjornson, I left Paris for Berlin.

The route lay for some time through an open country, rather level, with but little timber, and that consisting of small trees and underbrush. Why relate these things which so many Americans have seen? Because there are some people who have not traveled from Paris to Berlin, and because Americans who have passed through the country assume either that these matters are already known by every body, or of but little consequence; neither of which assumption is correct.

The fences are of stone or hedge. Toward noon the train passed along by the side of a swampy district, with a canal in the center. This continued for 20 or 30 miles. Just before dinner we passed through an apology for a forest. The trees were small, but much larger than any we had hitherto passed. After dinner we went through a better country. But little of it, however, could be called handsome.

At 1 o'clock, arrived at Charlevoi, a city of 20,000 inhabitants, and at 2 P. M., came to Nemur, which has 30,000. The houses of these cities are mostly of brick, and are old and rusty. Have seen but few handsome houses since leaving Paris. The villages passed this forenoon were nearly all small, the country not being so populous, as the north-western portion of France.

For an hour or so the river Meuse has been flowing at our right, while on the left, part of the way there are abrupt, rocky cliffs, resembling some of the less bold Rocky Mountain scenery in America. Some of the views on this river are picturesque.

Stopping over at Cologne, next morning I visited the famous Cathedral in that City. The exterior presents to the eye the handsomest building I ever saw. The handsomest inside, and at the same time the homeliest outside, of other noted buildings, is the great Cathedral of St. Peter at Rome.

The towers are of equal height with the length of the building, 532 feet. It has, inside, 104 large fluted columns of solid marble. It will contain 35,000 people. There are 128 windows of stained glass. It was over 600 years in building, having been commenced in 1248, and finished in 1880. How much it cost is not known, but the amount expended from 1842 to 1880 was 27,000,000 marks. ($6,750,000.)

At 8-35 A. M., December 9, took the cars again for Berlin. Crossed the Rhine and proceeded through an open country. This part of Germany is more level, even, than that part of France and Belgium through which we passed yesterday. There is but very little timber. Only a few handsome groves of very small trees. Fences of hedge—land well cultivated.

At 9-30, passed through Dusseldorf; 80,000 inhabitants.

12-45. For the last hour or so the country has assumed a better appearance. It is more rolling and there is more timber. We have traversed several groves of tolerably sized trees. We come now into an open country with hills in the distance. Much of the timber consists of evergreens, 20 to 40 feet in height. The same character of country prevails until about 3 P. M., when we arrive at Hanover. Sometimes there are hills in the distance, almost high enough to be called mountains.

We dined at Hanover, and now the shades of evening prevented further observations. About 8 P. M., arrived at Berlin.

The months of December and January were passed in Berlin. There was a good deal of rain, and a week or two of very sharp, cold weather.

The architecture of Berlin is rather heavy and sombre in its character. It is more like that of London than of any other large city. I do not like it so well as the lighter and livelier style which prevails in Paris, St. Petersburg and Vienna, all of which is not very much unlike that of New York and Chicago.

THE ROYAL MUSEUM.—This is, perhaps, to a traveler, the most interesting feature of Berlin. I visited it nearly every day for an hour or two during some two weeks. There is an immense collection of statuary and antiquities, perhaps greater than in any one place in Paris. In Berlin they are nearly all in the Museum. In Paris they are distributed in ten or a dozen places.

I have been reading Bjornson's last novel, "Det Flager," and have become intensely interested in it. His imagination is as powerful as his body. He is intellectually a giant, and something of the same physically. I hope "Det Flager" may be well translated into English, so that it may be read generally in America.

The Royal Museum has a number of departments, each of which is as large as an ordinary museum. Besides the very extensive collection of paintings, requiring for its accommodation a new building, and the general collection of statuary, there are The Antiquarium, the Collection of Egyptian Antiquities, The Engraving Department, The Collection of Casts, very large, in a double sense, The Collection of Northern Antiquities, The Mint Department, &c.

In marble statuary the Museum is, or was at that time, deficient.

The special feature of the Museum was the collection of broken statuary exhumed from the ruins of Troy by Dr. Schliemann. They were in recumbent postures, and were to be seen by the spectator, passing along on a little walk, slightly elevated. As one looked down upon them in their perfect outlines, they seemed like fragments of so many sleeping giants; nearly every one being much larger than life.

THE SECOND TIME IN GERMANY.—September 8. 1885.

Since my sojourn in Berlin, last winter, I had been traveling in Switzerland, France, England, Ireland, Scotland, Norway, (including a trip to the North Cape), Sweden, and Russia, returning by the way of Moscow and Warsaw, and now I found myself again in Berlin. I managed to escape the police and early this afternoon arrived in Hanover. This is quite a lively city, but not particularly handsome, except the parks and drives out to the castle, or summer house and grounds of "The Three Kings." That locality is quite beautiful.

At Herrenhausen, a little out from the City, is a large column of water from a fountain, which is thrown, the guide book says, over 200 feet high. When we saw it, it was perhaps 150. This is the fourth very high column of water that I have seen. The first was at the International Exhibition of Inventions at London. This in the evening was colored. The second was in the mountain park near Chistiansand, Norway, and the third was at Peterhoff, in Russia.

On the morning of the 20th of September, we left Hanover for Vienna by the way of Dresden. Visited the Hartzburg Mountains, so called, which, however, are so much inferior to the Rocky Mountains in height and grandeur, that they would in Western America be called "bluffs."

Arrived at Hartzburg during the afternoon, and remained there until the next morning.

At 8-30, took the train for Dresden. During the forenoon we passed through a fine, open country, all well cultivated. Passed Halberstadt, a city of 34,000 inhabitants, and Halle, 70,000, the seat of the celebrated University of that name.

At 2-30, passed through Leipsic and arrived at Dresden the same evening. Spent the day at Dresden, and visited twice the celebrated gallery of paintings. This is too well known to require any comment. It contains many of the works of the great masters, and has, doubtless, superior attractions for the artist; but I confess it did not please me more than the paintings in the Louvre, or in the Royal Museum at Berlin. Any one of the three is superior to any collection which I saw in London. Nothing particularly attractive in Dresden as a city. It is about like the average of European cities.

October 2. Started again for Vienna, passed up the Elbe, through the Saxon Swiss Mountains. The scenery, most of the way, was picturesque and beautiful. During the forenoon left the Elbe, and followed the Moldau, a branch of the Elbe, toPrague. On this route, passed through Boemen, a densely populated country, containing 5,000,000 of inhabitants. About 6 P. M., arrived at Vienna.

Vienna is a beautiful city. Architecturally speaking, it is as handsome as any I have ever seen. There are finer buildings in Paris and London, but the average buildings in London are inferior, while those in Paris do not much surpass buildings of the same grade in Vienna.

I made this beautiful city my place of sojourn for nine months, spending much of the time in the University Library.

Among the fine buildings of Vienna, is St. Stephen's Church, a grand cathedral, emulating in beauty and splendor of adornment, the Cologne Cathedral, Isaacs, St. Mark, or even Notre Dame. It lacks the costly statuary of St. Paul and St. Peter, and the gold and silver which is so profuse in Isaacs, of St. Petersburg.

St. Peters, in Vienna, is an old building, with a very unattractive exterior, and is very handsome inside; in both which respects it resembles its namesake at Rome. The priest was burning incense.

The Austrians, though they speak the German language, have a dialect of their own, the long o sound prevailing in many words, in place of the flat a.

C. B. W.

BOOK REVIEWS.

A TREATISE ON THE LAW OF CONTRACTS BY MARRIED WOMEN; THEIR CAPACITY TO CONTRACT IN RELATION TO THEIR SEPARATE STATUTORY LEGAL ESTATES, UNDER AMERICAN STATUTES. BY GEORGE E. HARRIS, OF THE BAR OF WASHINGTON, D. C., ALBANY AND NEW YORK: BANKS & BROTHERS; 1887.—This is an exhaustive work on the subject specified, and the law is laid down, and sustained by abundant citations.

The author discusses the law relating to a married woman so far as relates to her power and capacity to contract in relation to her separate estate created by statute, and the mode of enforcing such contracts, her power of acquisition by contract, her dominion over her separate legal estate, her power to contract in relation to it, her power to deal with, to charge, bind, pledge or incumber, and finally, to alienate it.

In order to draw the proper distinction between her power over her trust or equitable estate and her statutory legal estate, he has given the results of some adjudged cases in England and America. It is an important and valuable treatise on a very important subject.

INTERNATIONAL LAW. WITH MATERIALS FOR A CODE OF INTERNATIONAL LAW. BY LEONE LEVI, F. S. A., F. S. S., OF LINCOLN'S INN, BARRISTER AT LAW, PROFESSOR OF COMMERCIAL LAW IN KING'S COLLEGE, LONDON, DOCTOR OF POLITICAL ECONOMY OF THE UNIVERSITY OF TUBINGEN, ETC. NEW YORK, D. APPLETON AND COMPANY; 1888.—A small book, very handsomely executed, treating upon a subject of great importance, clearly and methodically arranged. It brings the history of international law down to the present time, and clearly lays down the principles to be applied in its administration.

A very important and useful portion of the book is the chapter entitled "The Political Condition of States." This gives the area and population, the form of government, and the principal treaty arrangements, at the present time, of every nation on the globe. Other chapters treat of International Relations, Treaties, Postal Communication, Copyright, &c.

We have read the work with interest and profit, and can heartily recommend it.

HENRY GEORGE V. HENRY GEORGE. A REVIEW BY R. C. RUTHERFORD. NEW YORK, D. APPLETON & CO., 1887.—This is the most satisfactory reply to George that has yet appeared. Mr. Moffat's work, "Henry George the Orthodox," is too involved in style to engage the attention of the ordinary reader. While Dixwell, in his review, fails to cover the entire ground, or even to meet properly the most important points. The writer of the work before us indulges in much caustic satire and ridicule, which might, under other circumstances be objectionable; but George himself, having made free use of similar weapons, has no cause of complaint.

UNION COLLEGE OF LAW,

OF

NORTHWESTERN UNIVERSITY (EVANSTON), AND UNIVERSITY OF CHICAGO (CHICAGO).

THE FACULTY.

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HON. WM. W. FARWELL, Ex-Chancery Judge, Circuit Court of Cook County, Prof. of Equity Jurisprudence, Pleadings and Practice.
MARSHALL D. EWELL, M. D., LL. D., (author of Leading Cases on Disabilities incident to Infancy, Coverture, Idiocy, etc., also a Treatise on the Law of Fixtures, etc.) Prof. Common Law, Contracts, Criminal Law and Torts.
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TERMS OF STUDY.

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QUALIFICATIONS FOR ADMISSION.

Applicants for admission to the junior class must satisfy the Dean that they have at least a good common school education. A course of liberal study in the sciences and a knowledge of Latin are desirable, and are strongly recommended, though not required. No distinction is made on account of sex or color.

Students who have completed the studies of the junior year in this college and have passed their examination, are admitted to the senior class in due course.

Members of the Bar of this and other states in regular standing, are admitted to the senior class without examination.

Students who have attended another Law College one year, or who have spent one year at least in the study of law in the office of an attorney, and who have read what is equivalent to the junior course of this college, may apply for admission to the senior class at the beginning of the collegiate year, or during the first half of the first term, and will be received in regular standing if found sufficiently advanced, on examination by the faculty.

These examinations will take place on September 30th and December 17th. No student except those who have taken the full junior course in the college and members of the Bar, will be admitted to regular standing in the senior class so as to become a candidate for the diploma, unless he shows the required proficiency at one of these examinations.

PRIZES:—Horton prize for best thesis or brief, $50; Faculty prize for thesis, second in excellence, $25; Faculty prize for best proficiency in the senior class, $50; Faculty prize for best proficiency in the junior class, $25; Dean's prize for best oration at commencement, $50; T. & J. W. Johnson's (Law Book Publishers, Phila.) prize to the graduating class for best thesis on some legal question of practical importance, "Smith's Leading Cases," 4 volumes.

The school year is divided into three terms:

First term begins Sept. 22, 1886, Wednesday.....ends Dec. 22, 1886, Wednesday.
Second term begins Jan. 5, 1887, Wednesday...ends March 30, 1887, Wednesday.
Third term begins March 31, 1887, Thursday.....ends June 15, 1887, Wednesday.

EXPENSES.

Tuition fees are payable in advance as follows: For a single term, $30; for two terms, $55; for a whole year, $80. Graduating fee and diploma, $10. Board may be obtained at from $3 to $6 per week. For circulars or information address

HENRY BOOTH, DEAN,
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Engraved by [illegible]

R. B. Taney

THE CHICAGO LAW TIMES.

VOL. II.] OCTOBER, 1888. [No. 4.

ROGER B. TANEY.

Roger Brooke Taney, fifth Chief-Justice of the United States, was born on the 17th of March, 1777, in Calvert County, in the State of Maryland. His father, Michael Taney, owned a good landed estate, with slaves. His plantation w... on the banks of the Patuxent River.

The forefathers of Judge Taney, on his father's side, were among the early emigrants to Maryland, and had owned the same estate and lived upon it for many generations. Both of his parents lived to an advanced age. They had four sons and three daughters. Roger B. was the third child and the second son.

When not more than eight years old, he was sent, with his elder brother and sister, to a school three miles distant, kept in a log-cabin by a well disposed but ignorant old man, who professed to teach reading, writing and arithmetic as far as the rule of three. They walked every day to and from the school when the weather was good, and when it was unfavorable they staid at home. Their only school books were Dilworth's spelling book and the bible.

After leaving this school, he was placed at a grammar school in the county, kept by a man by the name of Hunter, in which the pupils did not exceed twenty. Mr. Hunter was an accomplished classical scholar, and his school had a high reputation. Here Roger commenced studying the Latin language.

He was now under the instruction of private tutors for nearly three years, at the end of which time he was sent to Dickinson College, Carlisle, being then but little more than fifteen years of age.

His college life was, he afterward said, taken altogether, a pleasant one. He studied closely, was always well prepared in his lessons, and while he gladly joined his companions in their athletic sports and amusements, he found time to read a great deal beyond the books he was required to study. At the close of his college course he was elected by the Society of Belles-Lettres, to which he belonged, to deliver the valedictory.

He graduated in the fall of 1795, being scarcely nineteen years of age. He remained at home during the ensuing winter, which was idly spent in the amusements of the country.

In the spring of 1796, he went to Annapolis, to read law in the office of Jeremiah T. Chase, who was at that time one of the Judges of the General Court of Maryland. At the same time he attended the sessions of this Court. Every thing he there saw was calculated to excite his ambition. He declined going into society, and associated only with the students. He says afterward in his autobiography, that he thinks he studied too much at this time, and that it would have been better for him if he had occasionally mixed in the society of ladies and of gentlemen older than the students. "My thoughts" he says, "would have been more cheerful, and my mind refreshed for renewed study, and I should have acquired more ease and self-possession in conversation with men eminent for their talents and position, and learned from them many things which law books do not teach. I suffered much and often from this want of composure and from the consciousness of embarrassment, when I emerged from my seclusion, and came into the social and business world."

While his reading in the office of a judge instead of a practicing lawyer, had some advantages, he thinks, upon the whole, it was a disadvantage to him.

"It is true it gave me more time for uninterrupted study, but it gave me no instruction in the ordinary routine of practice, nor any information as to the forms and manner of pleading further than I could gather it from

the books. In the office of a lawyer in full practice, the attention of the student is daily called to such matters, and he is employed in drawing declarations and pleas, special and general, until the usual forms become familiar to his mind, and he learns by actual practice in the office, the cases in which they should be respectively used, and what averments are material and what are not. The want of this practical knowledge and experience was a serious inconvenience to me. And for some time after I commenced practice, I did not venture to draw the most ordinary form of a declaration or plea without a precedent before me; and, if the cause of action required a declaration varying in any degree from the ordinary money counts, or the defense required a special plea, I found it necessary to examine the principles of pleading which applied to it, and endeavored to find a precedent for a case of precisely that character; nor was it so easy, in that day, for an inexperienced young lawyer to satisfy himself upon a question of special pleading. Chitty had not made his appearance, and you were obliged to look for the rule in Comyn's Digest, or Bacon's Abridgment, or Viner's Abridgment, and the cases to which they referred; and I have sometimes gone back to Lilly's Entries and Doctrina Placitandi in searching for a precedent."

While in Annapolis at this time, he became intimate with William Carmichael, whom he afterward speaks of in terms of affectionate regard. Here also he met Luther Martin, Philip Barton Key, John T. Mason, John Johnson, Arthur Shaaff, James Winchester, and afterward with the celebrated William Pinckney.

After studying closely in Judge Chase's office for three years, Mr. Taney was, in 1799, admitted to the bar. His first effort was before Recorder Duvall, in the Mayor's Court of Annapolis, in defense of a man indicted for assault and battery; Duvall being also a Judge of the General Court. The following is his own account of his debut on this occasion:

"The case turned out to be a very good one for a speech. As almost always happens when a fight takes place in an excited crowd, there was much contradictory testimony, and it was difficult to say whether our client committed the assault or struck in self-defense. I watched the testimony carefully as it was given in, turning in my own mind the use that might be made of it. I took no notes, for my hand shook so that I could not have written a word legibly if my life had depended on it; and when I rose to speak, I was obliged to fold my arms over my breast, pressing them firmly against my body; and my knees trembled under me so much that I was obliged to press my limbs against the table before me to keep me steady on my feet. * * A verdict in favor of my client hardly consoled me for the timidity I had displayed. * * This morbid sensibility has, upon many occasions throughout my professional life, given me deep

pain and mortification. * * Although I had been some years in the practice when I made my first speech in the Court of Appeals of Maryland, and many more when I first appeared in the Supreme Court of the United States, I felt it on each of these occasions nearly as much as when I tried the case in the Mayor's Court."

Soon afterward he returned to Calvert County, and entered upon the practice of his profession in this and the adjoining counties. He was at once put forward as a candidate for the House of Delegates, and was elected; thus commencing his public official career when but twenty-two years of age. There were five candidates, of whom four could be elected, and according to the custom of the country, they sat upon a raised bench immediately behind the sheriff, so that each could be seen by every voter.

Before the next session, the question arose as to the manner of choosing presidential electors. They had formerly been chosen in Maryland from districts. But now the federalists wishing to cast the entire electoral vote for Adams, advocated the choosing of electors, as in Virginia, by a general ticket. On this issue the federalist party, to which Mr. Taney belonged, were beaten, and the State fell into the hands of the republicans.

In March, 1801, Mr. Taney settled in Frederick, as a better field for the practice of his profession.

In 1803, he became a candidate on the federal ticket for the House of Delegates, but was again defeated.

Mr. Taney soon acquired an extensive practice and a high position at the bar, and in 1806, was married to Anne Phebe Charlton Key, daughter of John Ross Key, who was a lieutenant in the first artillery which went to Boston from Maryland at the outbreak of the revolutionary war. Francis Scott Key, brother of the bride, was a fellow practitioner of Mr. Taney. He was the author of "The Star Spangled Banner."

From this time forward Mr. Taney filled many positions of trust and responsibility. He was for a long time a Director in the Frederick County Bank, and was, for twenty years, a Visitor of the Frederick Academy.

In 1811, he successfully defended General Wilkinson, then Commander in Chief of the United States Army, who was tried

on a series of charges before a military court convened at Frederick. General Wilkinson was acquitted and his sword restored to him.

Mr. Taney was of the federal party, and shared in its opposition to the declaration of the war of 1812; but as soon as the war was declared, he gave his support to the Government, and so did most of the federalists of Maryland.

Mr. Taney was at this time nominated for a seat in the House of Representatives of the United States; and notwithstanding the great strength of the republican party in that congressional district, he was defeated by only three hundred majority.

In 1816, he was, with the approbation of all, elected a member of the State Senate. His services in the Senate were very valuable to the State.

At the March term, 1819, of the Frederick County Court, Mr. Taney defended Jacob Gruber, a minister in the Methodist Church, on a charge of inciting the slaves to insurrection, by preaching an incendiary sermon. Mr. Gruber was acquitted. The moral courage displayed by the illustrious counsel on this occasion, cannot be too much admired.

"Such was Mr. Taney's reputation, at this period," says Samuel Tyler, in his Memoir of Judge Taney, "that he argued appeals from every county on the Western Shore of Maryland; as may be seen in the reports of the cases."

Mr. William Schley, an eminent lawyer of the Baltimore bar, thus speaks of him at this period of his career;

"His language was always chaste and classical, and his eloquence undoubtedly was great—sometimes persuasive and gentle, sometimes impetuous and overwhelming. * * He was an open and fair practitioner. * * He had acquired and ever retained the confidence and respect of the community."

In 1823, Mr. Taney removed to Baltimore, and was at once recognized as at the head of the bar of that city. William Pinckney had lately deceased, a man whom Mr. Tyler, in the memoir already referred to, speaks of as "the greatest forensic character who has ever appeared in the American courts."

In 1827, upon the unanimous recommendation of the Balti-

more Bar; Mr. Taney was appointed Attorney General of Maryland.

On the 21st of June, 1831, he was appointed by President Jackson, Attorney General of the United States. While in that position, he aided the President in preparing his message, vetoing the bill for the renewal of the charter of the National Bank. And when South Carolina presented her nullification doctrines, Mr. Taney supported Jackson in his resistance to those doctrines, though he objected to some things in Jackson's proclamation upon the subject. He was also in favor of removing the deposits from the National Bank.

In September, 1833, Mr. Taney was appointed Secretary of the Treasury, in place of William J. Duane. The House of Representatives supported the policy of the President and Secretary, and the fate of the Bank was now sealed.

In June, 1834, however, the nomination of Mr. Taney as Secretary of the Treasury, was rejected by the Senate.

He now resumed his practice in Baltimore, being received in that city with a civic triumphal procession, followed by a public dinner. Other public dinners were tendered him, one of which, at Frederick, he accepted.

In January, 1835, Judge Duvall having resigned his seat as Associate Justice of the Supreme Court of the United States, General Jackson immediately nominated Mr. Taney as his successor.

The great Marshall was still presiding as Chief-Justice. He had a peculiar dislike to General Jackson and his policy; nevertheless he wrote a letter in favor of Taney's confirmation.

In the Senate, however, at the close of the session, when the nomination was brought up it was indefinitely postponed, which was equivalent to a rejection.

Chief-Justice Marshall having died in the summer of 1835, on the 28th of December, President Jackson nominated to the Senate Mr. Taney to fill his place as Chief-Justice of the Supreme Court of the United States. The political complexion of the Senate was now changed, and though he was determinedly opposed by the federal party, led by Clay and Webster, he was confirmed by a majority of fourteen votes. The confir-

mation took place on the 15th of March, 1836.

It is claimed by Judge Taney's biographer, that the later tendency of Chief-Justice Marshall's decisions was a departure from his earlier ones, and that it was the mission of Chief-Justice Taney to counteract that tendency. He says:

"In the case of McCulloch v. The State of Maryland, Chief-Justice Marshall was made to swerve from his earlier strictness of construction by the moulding and transforming logical power, aided by the delusive light of the seductive fancy of Pinckney. The great orator put his own thoughts into the mind of the Chief-Justice without his knowing it, until he made him see in the auxiliary provision of the Constitution, "to make all laws which shall be necessary and proper for carrying into execution" the specific powers granted, powers as original as those they are to carry into execution. And the Chief-Justice never afterward freed himself from this persuasive coercion of that master of the forum."—[Memoir of Judge Taney by Samuel Tyler, LL.D., Balt., 1872, p. 271.]

The learned author then passes under review some of the decisions of Judge Taney on Constitutional questions: The City of New York v. Miln; Briscoe v. The Bank of the Commonwealth of Kentucky, and The Charles River Bridge v. Warren Bridge.

Justice Story delivered an elaborate dissenting opinion in the last case, and Chancellor Kent was so much opposed to these opinions that he wrote in a letter to Mr. Justice Story, "I have lost my confidence and hopes in the constitutional guardianship and protection of the Supreme Court."

As late as 1845, Justice Story, who was not yet reconciled to the decisions, wrote to Hon. Ezekiel Bacon, as follows:

"I have been long convinced that the doctrines and opinions of the 'old Court' were daily losing ground, and especially those on great constitutional questions. New men and new opinions have succeeded. The doctrines of the Constitution, so vital to the country, which in former times received the support of the whole Court, no longer maintain their ascendency. I am the last member now living of the old Court, and I cannot consent to remain where I can no longer hope to see those doctrines recognized and enforced. For the future, I must be in a dead minority of the Court, with the painful alternative of either expressing an open dissent from the opinions of the Court, or, by silence, seeming to acquiesce in them."

Holding these views, Justice Story had come to the conclusion that he would resign his seat upon the bench, and devote his life to his law professorship at Harvard University. But

he died on the 10th of September, 1845, and thus America and the world lost one of the greatest of jurists.

While, however, Justice Story entertained these views in regard to the constitutional questions which came before the Court, he had a very high opinion generally of the Chief-Justice as a jurist, and their personal relations were of the most cordial character. On the 25th of March, 1843, he wrote to Chief-Justice Taney, as follows:

"I read the opinion of the Court in the Illinois case, respecting the stay laws of that state, with the highest satisfaction, and entirely concur in it. I think your opinion is drawn up with great ability, and in my judgment is entirely conclusive. I hope that the opinion was unanimous; but within a few days it has been suggested in Boston that Brother McLean differed from the Court. But the information has not reached me in such a way as to make me feel that it is entitled to credit. At all events, I should regret to find it true. There are times in which the Court is called upon to support every sound constitutional doctrine in support of the rights of property and of creditors."

When Justice Story died, the Chief-Justice wrote to Mr. Peters as follows:

"What a loss the Court has sustained in the death of Judge Story! It is irreparable, utterly irreparable in this generation; for there is nobody equal to him."

In the summer of 1855, Judge Taney met with a very heavy affliction in the death of his wife and youngest child, who fell victims to the yellow fever, at Old Point Comfort.

In 1856 came the celebrated opinion in the Dred Scott case. This decision was pronounced in the midst of much political excitement, and was followed by events of momentous character—events which were accelerated by the decision itself.

Dred Scott, a negro slave, had sought the freedom of himself and his wife and children by a suit in the State courts of Missouri. The case reached the Supreme Court of Missouri, and was in 1852, decided adversely to Dred Scott. In November, 1853, the case was carried into the Federal Court in the City of St. Louis.

The declaration contained the averment necessary to give the Court jurisdiction; that plaintiff was a citizen of Missouri and defendant a citizen of the State of New York. The defendant pleaded in abatement to the jurisdiction of the Court,

that the plaintiff was not a citizen of the State of Missouri, being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred. The Court sustained the demurrer, and defendant answered over, putting in sundry pleas in bar. Issue was joined, and on the trial the verdict and judgment were in favor of the defendant. Whereupon the plaintiff sued out his writ of error to the Supreme Court of the United States.

The case was twice argued, and the decision was rendered at the December term, 1856. It was in fact announced the day after the inauguration of President Buchanan.

The first question decided by the Chief-Justice, who delivered the opinion of the Court, was as to the plea in abatement. He held, that owing to the limited jurisdiction of the Federal Courts, as distinguished from courts of general jurisdiction, the question as to the validity of the plea in abatement was before the Court, notwithstanding it had been decided in the Court below in favor of the plaintiff in error, and notwithstanding defendant had pleaded over.

Proceeding to consider the question whether plaintiff was a citizen of the State of Missouri, the Chief-Justice went very extensively into the history of the country, and even extended his review to other countries, in order to show the social and political condition which the negro had occupied. In doing this, he used the following language:

"It is difficult at this day to realize the state of public opinion, in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit."

He then examined very thoroughly the question of citizenship in this country.

The decision upon this branch of the case was, that Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; consequently that the Circuit Court had no jurisdiction of the case.

But the plaintiff had in the Court below claimed that he was entitled to his freedom on the ground that he had been voluntarily taken by his master to Rock Island, Illinois, and there held as a slave; thence removed to Fort Snelling, where he was held as a slave for two years. At Fort Snelling he had married his wife Harriet, who was also a slave, and by this marriage he had two children. By virtue of these acts plaintiff claimed he had been set free by operation of the Missouri Compromise Act; that he and his wife became free when voluntarily taken north of the line specified in that Act.

The Chief-Justice next proceeded to consider this question in an elaborate opinion, which ended by declaring the Missouri Compromise Act null and void.

It was further held that after Dred Scott had been taken back to Missouri, his legal status must be determined by the laws of Missouri, and by those laws he and his family were slaves.

Judge Taney lived about eight years after rendering this decision. He died on the 12th of October, 1864, in the eighty-eighth year of his age.

He was a man of singular uprightness of character in his private life, respected by all for his social virtues and his great legal learning, and held in the most affectionate remembrance by those who knew him well.

Much has been said about the Dred Scott case, and the Chief-Justice has been assailed in the bitterest manner. It has been said that his name would go down to posterity covered with infamy. But the fact is, that in rendering the decision in regard to the political status of the plaintiff, he voiced the sentiment of the then majority of the American people.

It was not, perhaps, necessary to decide on the Missouri Compromise Act, inasmuch as he held that after plaintiff had been brought back to Missouri, his status was to be determined

by the laws of that State; but if the decision had been otherwise on the constitutionality of the Missouri Compromise, and on the effect of the return of Dred Scott to Missouri, then the Court would have held the plaintiff to be a citizen of the United States and entitled as such to sue in the Federal Courts, and there obtain his freedom. Happy indeed would it have been for our country had the Chief-Justice been able to rise to that moral height; for, though it might have resulted in a civil war, there is no reason to believe that the war would have been such a long and bloody one as that which actually occurred. Backed by the moral power of such a decision by the highest judicial tribunal of the land, the forces of law and order would soon have gained the ascendency.

In being led by, instead of leading the moral sentiment of the times and of the country in which he lived, Judge Taney did what the judiciary are doing now, and what, with rare exceptions, they have done in every age. Let him who is disposed to stigmatize the Chief-Justice for this decision walk backward, and cast a mantle over the nakedness and shame of his country, which this adjudication fully exposed. Instead of casting obloquy upon Judge Taney for not rising above his surroundings, let him rather mourn that those surroundings were what they were; and let him congratulate himself that the decision opened the eyes of the nation to the great wrong and crime which was being perpetrated in a country which had professedly founded its institutions upon the doctrine of the equal civil and political rights of the people.

REFORM IN THE ADMINISTRATION OF THE CRIMINAL LAW IN THE STATE OF ILLINOIS.

History shows that the constant advance of the human race in intelligence and morality renders it necessary from time to time to change the laws and the penalties of laws in order to adjust them to higher forms of civilization. There is a natural and justifiable conservatism in the modification or even abrogation of laws which have been applied with more or less of success for many centuries. When experience and observation make prominent the defects of existing laws, and their justice and expediency are questioned and the difficulty of their enforcement is rendered apparent, then they should be either amended or repealed. Such a time has come in relation to the system of trial by jury in this country. This system is unquestionably one of the most marked and characteristic features of the common law of England. Having for ages attracted the attention of mankind and protected the constitutional liberties of the land—having been the subject of the most fulsome and extravagant eulogy by its admirers, and the most virulent abuse and sarcasm by its opponents—having extended itself in its entirety over nearly the whole continent of North America, and in a modified shape, over a great part of Europe, the trial by jury has in modern times been brought to stand its own trial at the bar of public opinion in the land of its birth and in foreign lands. Its utility has been questioned by many, its abolition openly advocated by others and the opinion has become very general that it requires modification of some kind to

bring it into harmony with the march of intelligence and the altered state of society.

A recent very able English writer says much misconception has arisen from the expression "trial by jury," which as applied to English law is most certainly a misnomer. Trial by judge is where the judge decides both the law and the facts; and trial by jury is where the jury decide both the law and the facts. But no such tribunal as the latter is known to the law of England. Our common law mode of trial is a trial by judge and jury. The judge, armed with the authority of the law, conducts the entire proceedings, decides all questions of law, and when the cause is ripe for decision, sums up the case to the jury, instructing them in the law respecting it, and commenting upon the evidence; while the jury on their part determine the facts, with the right, however, of applying the law to them by finding a general verdict, i. e., in criminal cases "guilty" or "not guilty", and in civil cases, "for the plaintiff" or "for the defendant." In civil cases a new trial is granted *ex debito justitiæ*, if an error in law is committed by the judge, or the jury find a perverse verdict, i. e., refuse to listen to the law as correctly laid down to them by the judge; and the court above will also set aside a verdict if in the exercise of a judicial and not an arbitrary discretion, they see that it is so unequivocally against the weight of evidence that it ought not to be allowed to stand. In criminal cases points of law must be reserved by the judge; and new trials are not in general grantable. Such is our celebrated common law tribunal, which with all its faults, real or imaginary, is immeasurably superior to every other; and I firmly believe that evil will be the hour for the people of this land when, seduced by any theory however plausible or deluded by any considerations of fancied expediency however tempting, they consent to part with it.

Trial by jury originated in the adaptation to the administration of justice of the process commonly in use in the eleventh and twelve centuries for obtaining information as to matters of fact, namely, collecting an inquest or body of persons supposed to be acquainted with the subject and taking their sworn statement about it.

The members of the inquest were originally witnesses, they and not their informants, being responsible for the truth of the verdict.

By slow degrees they acquired the character of judges of fact, informed by witnesses.

This process lasted from the first origin of juries in the twelfth or thirteenth centuries down to the sixteenth century, when we have the first fairly trustworthy records of actual trials.

The English colonists seem to have had a deep seated and deep rooted regard for the right of trial by jury and it is quite remarkable that all that is extant of the legislation of Plymouth Colony for the first five years consists of the single regulation "That all criminal facts and also all manner of trespasses and debts between man and man shall be tried by the verdict of twelve honest men, to be impaneled by authority in form of a jury upon their oath."

PREVENTION OF CRIME.—The Code of Criminal law in every well regulated State should be founded on one principle, namely, the prevention of crime; that all offenses should be explicitly and clearly defined, in language generally understood; that punishments should be proportioned to offenses; that the rules of evidence should be ascertained as applicable to each offense; that the mode of procedure should be simple and the duty of magistrates, executive officers and individuals assisting them, should be pointed out by law, and as little left to judicial construction as possible.

The great mass of our legislators have restricted all of their efforts in the protection of society, to waiting, watching for, and punishing crime. Its prevention is something beyond their comprehension. Narrow minded legislators are willing to appropriate millons to erect and maintain penitentiaries and State prisons, while not a dollar can be obtained to establish industrial schools for the helpless, homeless, unfortunate waifs of society who are running wild in our streets and growing up to manhood and womanhood steeped and educated in crime, ready to enter and graduate at our penitentiaries as fast as they are built.

The true system of all penal laws should be comprehensive in

its nature and should deal with the prevention as well as the punishment of crime. They should treat the whole subject in its widest sweep and should have a general control over the whole fabric of society from top to bottom—from turret to foundation, so far as the same relates to the prevention of crime and its punishment. There should be first, the school of the people, the common school; second, the school of reform and manual training; third, the house of refuge and industry; fourth, the house of detention; fifth, the bridewell; sixth, the penitentiary.

We believe in education of the head and the heart, the hands and feet, the mind and body. We believe in teaching our children that labor, industry and economy are necessary to success in life, and that plodding industry and contentment, with perseverence and steady push, are better than the eternal scheming of demagogues whose constant endeavor seems to be to avoid all work or work just as little as possible and receive the same pay as the most skilled and most industrious portion of mankind.

The care, education and proper training of the youth of our country are matters of the deepest concern to this State and nation.

"There is" said one of England's most illustrious men, "a class in community who seem to think that government is simply a great hangman, and government ought to do nothing except by harsh and degrading means. That the one business of government is to handcuff, and lock up and scourge, and shoot, and stab, and strangle. That it is odious tyranny in a government to attempt to prevent crime by informing the understanding and elevating the moral feeling of the people."

The Supreme Court of this State, in a decision rendered by it in 1870, formally adopted this view, and gave to it their sanction.

That decision was rendered in the case of The People v. Turner, 55 Ill., 280.

It practically repudiated the doctrine of *parens patriæ*, and denied all power to the State to either care for or restrain the ungoverned children of misfortune in our midst. The court

has since that time been reorganized, and this view overruled.

There are in our midst a vast number of boys and girls in idleness, mendicancy and vice, some without proper parental care, and some with no care at all. What shall be done with them? Shall we wait until they have matured into criminals and then apply to them the handcuff, and stab and strangle them, or shall we take them now, and place them in schools where they will be taught to read and write, and to think and acquire habits of usefulness and sobriety?

When the Supreme Court of this State, in 1870, overthrew the reform school in Cook County, and all kindred institutions, and even compulsory education itself, all efforts in this direction ceased, and nothing has been done to prevent the helpless and neglected from becoming as vicious as they choose.

The reform school of Pontiac which was established a few years ago as a penal institution, deals only with boys from ten to sixteen years of age, who have been convicted of crimes, and that has been most meagerly supported and maintained. It is a good institution of its kind, and should be liberally supported.

There is great necessity for an industrial school for boys and girls in this State which shall take charge of the homeless and helpless waifs of society.

Heretofore there has been great apathy existing in the public mind in regard to this whole matter, but with the aid of the public press and all good citizens, we think something can be done to rescue from destruction the thousands of boys and girls who roam our streets uncontrolled.

The two great necessities in our country at this hour are, first, some thorough effectual measure for clearing the streets of our cities and large towns, of the wild, lawless, homeless, unrestrained, unfortunate, begging and vicious children, and, secondly, a place to put them, where they can be cared for, and trained up with habits of sobriety, and be taught trades, or placed among those who will look after them and care for them.

Society must act in this matter, in self defense. "These children have not a claim upon us simply because they are hu-

man and are to be the companions of our own children, but because they are to be our rulers.

"The poor and criminal of the streets of our cities govern, by their votes, the residents upon the parks and avenues."

Many men who suffer by the depredations of the robber and the burglar, are ready to vote millions to erect penitentiaries and jails for their incarceration, but think they are treated unjustly if called upon to pay a small tax to be expended in endeavoring to prevent the brood of marauders from multiplying and repeating their attacks upon their homes and property.

Mr. McClaughrey, warden of the Illinois penitentiary, at Joliet, than whom no one is better qualified to speak, said in a public address, delivered in the city of Chicago, a few years ago, that the statistics showed that out of the 1,500 prisoners at that time confined in that prison, 97 per cent. were under 50 years of age, 89 per cent. were under 40 years of age, 69 per cent. were under 30 years of age, and 20 per cent were under 20 years of age.

These figures show conclusively that the criminal classes are recruited from the young.

At the conclusion of his address, he said:

"The State should assume the charge of all children under fourteen, who had no parents, or worse than parents. The power of education should be delegated to individuals or schools, under wise restrictions. Industrial schools should be small, scattered home-like, away from the cities, and under woman's influence. It will be cheaper by far to educate than to catch, convict and punish; and, above all, the children should be well grounded in those moral principles which would influence them to avoid crimes quite as much from principle as from fear."

Mr. C. E. Felton, the superintendent of the house of correction in the City of Chicago, says, in his recent report for 1882: "Several years ago, I urged the necessity for provision for the reformation of juvenile delinquents. I then said:

'Make your law such that, should parents neglect to properly care for their offspring, the authorities may successfully assume that duty. Take the custody of such offspring at the earliest possible age, as the children of criminals are very precocious, and the possibilities of developing for the better are being weakened by every day's delay. As far as possible, let the tender hands of the philanthropic, through individuals, societies, and institutions, care for the younger and more hopeful of these most piti-

able of God's little ones, as the work will thus be better done than in large public institutions by political officials. Never permit them to be inmates of county almshouses, as public wards, where they will be brought up in idleness and ignorance, and where they never can receive proper industrial or moral culture. There can be no influence more depressing than almshouse institution life to these little waifs. All children should be removed from such institutions and placed where, by humanizing processes, the influence of heredity or of misfortune may be overcome. For the training of the more mature and vicious, construct and maintain asylums and reformatories upon broader principles than prevail in the prisons we now have."

And again:

"While nature furnishes localities suggesting criminal acts, she also furnishes places of such scenic beauty that the hardened criminal, by her inspiration, becomes purer in thought, and his conscience is so moved as to awaken better resolves and an amended life. The site for a reform school or moral hospital, if you wish so to call it, should possess such beauty. In the construction of buildings, remember that mere strong fences without and whitened walls within depress, but do not elevate, the moral faculties of man. Scarcely one of the many juvenile delinquents has ever known the true home in infant life. For these little ones, you should so construct your buildings that by your aid they may renew their infant childhood. In administration, let the home principle, in all cases where it is safe to do so, be the model applied. Cultivate habits of industry, but let the pecuniary profit arising therefrom be an incidental, and not a necessary end. As the abilities and tastes of your inmates will materially differ, no single branch of industry will meet the necessity. The weak in intellect will require work of almost automatic character, but the thoughtful, active brain of the more intelligent, must have food in his industry for that brain, or it will run riot with all efforts at improvement."

A PRISON CHAPLAIN'S OPINION OF THE CAUSES OF CRIME.—Rev. Fred L. Thompson, chaplain of the southern Illinois penitentiary at Chester, in his report for 1882, accompanying the commissioner's report to the governor, says:

"I have read every available thing on crime, its cause and cure: on prisons, their discipline, etc. I have talked freely with the convicts as to their early lives, their home influences, their early opportunities and their habits, and have come to the conclusion that there are two prime causes of crime—the want of proper home influence in childhood, and the lack of thorough, well-disciplined education in early life. Of the first, there are at least five classes—those who never knew a home; those who lost parents, one or both, while young; those who had vicious homes; those who ran away from home in the formation period of life, and those who were over-indulged in their homes. Of the second, there are those who never went

to school; those who went but very little, and those who played truant or were idle and refractory in school. The lack of this early influence and training at home, and of this discipline and learning in school, has left the individuals morally and mentally weak, the easy subjects of bad habits, vicious appetites and designing men.

"These drift into the tide of bad associations, trashy and then vicious reading, to places of carnal amusements, to saloons, gaming houses, houses of ill fame, to the society of the vulgar and criminal, to the committing of crimes—small at first, but bold at last—and then into the penitentiary. The current of this stream is as traceable, and its sweep as powerful and merciless, as the channel of the Mississippi River. As the latter, unmolested, sweeps its drift into the Gulf of Mexico, so certainly the former sweeps its drift into the penitentiary, or some other form of penal service, unless the strong arm of society is in some way put forth to the rescue."

Mr. Thompson estimates that out of 500 criminals under his observation, 419 were without home influence at eighteen years and under; 218 never had been in school, and only 32 learned to read and write in prison. Of their habits, he learned that 406 frequented saloons; 115 were drunk at the time their crime was committed; 246 gambled, and 208 carried concealed weapons. Over one-half (290) were under twenty-five years of age at the time of committing the first penitentiary crime.

Crime can never be eradicated except by instilling into the minds of the rising generation principles of common honesty. We use the term in its fullest and its broadest sense. It should be sung as lullaby to prattling infancy, and lisped in childhood's prayers. It should be instilled into every youthful mind, and sounded in the ears of every school-boy and school-girl in this broad land. It should be inscribed on our door posts and lintels, preached from the pulpit and from the bench, and sounded eternally in the ears of young and old.

A PRESIDING JUDGE SHOULD HAVE POWER ABOVE THAT OF A MODERATOR.—We have adopted by statute in this State the common law of England as it existed there prior to the 4th year of James I, and we have also provided by statute that all trials for criminal offenders shall be conducted *according to the course of the common law* except where it is otherwise expressly provided; and yet what do we see? By a most unfortunate ruling of the Supreme Court of this State made years ago, these statutes have been in force and effect repealed and the trial

of criminal cases given over to criminal lawyers, and almost every vestige of power which a judge had by virtue of the common law taken away from him, and he cannot even contro the impaneling of a jury without engaging in a brutal contest extending through days and sometimes weeks. There is no other State in the American Union nor any other civilized country under the sun where such a latitude is allowed and upheld by the Supreme Court in examining jurors as in this State, and it is no wonder that our business men look upon jury service as a calamity and flee to the mountains whenever a deputy-sheriff or bailiff from the Criminal Court appears at the front door.

The prolongation of the trial of criminal cases, is one of the crying evils of the age in which we live, and should be remedied, but it never can be remedied until judges are clothed with power sufficient to do their duty without being subjected to public execration either by the community where they live or by the Supreme Court. Under our system of doing business the judicial force required is ten times what it is in England.

The judicial business of England and Wales was a few years ago discharged by thirty-four judges of general jurisdiction, paid in the aggregate less than a million of dollars and the population served twenty-five millions, while New York State alone employs more than four hundred and fifty judicial officers, at a cost of a million dollars, while the population is only five millions and the same proportion we think holds good here.

We have said that a *nisi prius* judge in the State of Illinois has no discretion about anything except to look wise, keep order and grant new trials.

In the administration of the criminal law instead of trying the criminal he is put on trial himself from the beginning to the end of every case.

A recent writer in the American Law Review, says:

"Nothing more curiously illustrates the weakness of our American law of criminal procedure than the fact, apparent in almost every report of the decision upon an appeal in a criminal case, that after the trial and conviction of an accused person charged with a heinous crime, the judge who tried him is

himself put upon trial in a higher court. After a long delay the various steps in the trial are carefully scrutinized by the appellate court and a laborious opinion is written on *the question of the regularity of the procedure*, without making *any* reference to the *real* question of the guilt or innocence of the accused. Is it surprising that where such a system of criminal procedure prevails, the arm of the criminal law is weak and pusillanimous, that crimes multiply unchecked and that Lynch-law takes the place of the law of the land?"

The two great questions which should always arise in criminal cases and which practically alone concern the public are,

1st: Whether an offence has been committed; and

2nd: Whether the accused is the guilty person.

To this end and to this alone all judicial investigations should be directed, and not to building up a body of law which shall immortalize its authors or take rank with the highest triumphs of genius in the field of philosophy or metaphysics.

Whatever cost or trouble is necessary to be expended in ferreting out crime and punishing its commission should be borne without a murmur, *but the shameful waste of time of the court and the more outrageous waste of time of the private individual* who is called to sit as a juror in the trial of criminal cases in these modern times call for reform.

Much of this comes from the fact that for some reason or other at a comparatively early period in the history of this State, the prosecution of all capital cases seems to have been regarded as a most unwarranted invasion of the rights of the citizen; and the judge on the bench and prosecuting officer who appeared on behalf of the people, were looked upon as common enemies, who were to be either exterminated or overthrown and put down at any and all hazards; while the malefactor was to be treated as an abused and down trodden victim of oppression, the fit subject of pity, and entitled to the tenderest consideration at the hands of his oppressors, while he was given the benefit of every technical advantage known to the law—and of every *possibility* of doubt on every point at all times and on all occasions.

Under the rulings of the Supreme Court he had the most

unbounded latitude accorded to him in the examination of jurors, and he claimed the right to inquire fully into the life and times of each in his search after bias, in order that he might exercise his right of challenge and if he could not get the *right kind* of men in one day he would consume days and even weeks in making his selection.

The presiding judge was at an early period stripped of all discretion, and the great effort which all criminal lawyers aimed at was, to get error into the record, and this they did by making every conceivable objection to every step taken in the case and to every ruling made by the court, and the result was that if "the victim" was not acquitted outright by the jury he was pretty sure to be by the Supreme Court to which he appealed. Indeed a jury trial in a criminal case in Illinois, has, until recently, always been determined by an equation of errors instead of on the merits. To such an extent was this matter carried that the Supreme Court sometimes forgot that the great question was the guilt or innocence of the prisoner at the bar, and if the clerk in making up the record omitted to append a placita, that is, a statement that the judge and prosecution were present when the case was tried, they would reverse the case and send it back for a new trial. We thank God that that day has passed, and that the subtleties and refinements of the school-men are no longer looked upon as essential for the conservation of human society much less an enlightened administration of the criminal law. It was such things as these that stirred the soul of the late Judge Breese when he said in his famous dissenting opinion in the case of Jumpertz v. The People: "The case is one of great public importance, as affecting the security of life and demands the closest scrutiny. A homicide unexampled in the annals of any country has been committed in our largest city, under circumstances of the greatest atrocity and under the ruling of the court the guilty party may go unwhipt of justice." By the most subtle and technical rulings which ever characterized a court, a vile wretch and most atrocious murderer escaped just punishment. Nobody on earth ever doubted his guilt so far as we know and no justification can be offered for such rulings.

Judge Breese never ceased to the latest moment of his life to denounce that decision and as we happen to know always regarded it as an outrage. It is just such things as these which induces Lynch-law and leads the people to look upon criminal trials with contempt.

What we insist upon is, that the State or rather the people should have at least an equal chance in the presentation of their side of the case, with the criminal who has violated the law and who has been arraigned at the bar of public justice. There is no other region on the face of the earth where those who are charged with the commission of criminal offences are treated with such deference and such tender consideration as in this country and in this State. To a stranger every step that is taken seems to be accompanied by an apology and even now to land a proven and convicted criminal of high standing inside of the walls of the penitentiary is a task of greater magnitude than to convert the heathen or run a presidential campaign.

Daniel Webster said:

"Such is human nature that some persons lose their abhorrence of crime in their admiration of its magnificent exhibitions.

"Ordinary vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime seize on the imagination and lead them to forget the depth of the guilt in admiration of the excellence of the performance or the unequaled atrocity of the purpose.

"There are those in our day who have made great use of this infirmity of our nature and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles of the young, the heedless and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive sometimes by its very extravagance, and study to show off crime under all of the advantages of cleverness and dexterity."

The voluminous body of our statute law may be looked upon as a reflex of the people, and has from age to age borne faithful witness to our infirmities and foibles, our ignorance and intolerance, our cruelty and our crimes.

Criminal Code of Illinois.—The original code of criminal law of the State of Illinois was drafted by Judge Samuel D. Lockwood, one of the purest men that ever lived and one that was endowed by nature with rare gifts. The services that he rendered the people of this great Commonwealth at the

dawn of our history, and to the jurisprudence of the country, should keep his memory in perpetual remembrance. What Solon and Lycurgus could not do, he did; and what took England a thousand years to accomplish, he accomplished in a few weeks, and that is the production of a comprehensive, humane and enlightened criminal code, well adapted to the wants and necessities of the people of the time in which he lived

In giving an account of it in after years, he said:

"In 1826 there were no libraries in the State, to which I had access. I had brought with me to this State a volume of the laws of New York, passed in 1802, and I found in the office of the Secretary of State a volume of the laws of Georgia. These were all the aids I had in framing our criminal code of 1827, and the act regulating the apprehension of criminals. That code was designed to apply to a new country then almost a wilderness, with but a small population, and little or no agricultural, commercial or manufacturing interests to protect."

In 1845, Judge Lockwood, in deciding the case of McKinney v. The People, 2 Gilman, 548, which was a capital case, gave this review of the state of the criminal law in England, and how the criminal code of this State had improved it:

"The English criminal laws may truly be characterized as written in blood. When Blackstone wrote his commentaries, there were one hundred and sixty different kinds of crimes, for the commission of which the offenders expiated their guilt on the gallows. Stealing the value of one shilling was a capital offense.

"When the individual accused of a capital crime was arrested, he was, after examination and conviction by a justice of the peace, immured in a dungeon, and there remained cut off from free intercourse with his friends, till brought into court for arraignment and trial. On his trial for any of the numerous offenses denominated felony, he was not allowed the aid of counsel in his defense. He was not even allowed witnesses to prove his innocence. And when in process of time the court permitted the witnesses to be heard on the part of the accused, yet they were not sworn, and the consequence was that their evidence was not considered by the jury as entitled to as much credence as the witnesses on the part of the government.

"Because the prisoner was not allowed counsel in his defense, the courts early adopted the maxim that the judge was counsel for the prisoner. Humane judges finding themselves thus called upon to administer laws so reckless of human life, and that made so little provision for a fair trial, naturally caught at trifles to save the life of the prisoner. In favorem vitæ, was the cause assigned for many technical rules that but for the extreme inhumanity of their laws, and the helpless condition of the prison-

er, would be a disgrace to an enlightened administration of justice.

"How stands the case in this State? By our constitution the accused is entitled to be heard by himself and his counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face, to have compulsory process to compel the attendance of witnesses in his favor. He is also entitled to a speedy public trial by an impartial jury of the vicinage, and cannot be compelled to give evidence against himself. Here, the accused, so far as the means of defending himself are concerned, is placed on a perfect equality with the prosecution; and there consequently can be no reason for adopting many of the technical rules that have prevailed in England, arising out of the sanguinary character of their laws and the helpless condition of the prisoner. It is a well settled maxim of the common law that where the reason of a law ceases to exist, the law itself ceases. Courts in the United States, without giving sufficient attention to this excellent maxim of the common law, have in too many instances, as I conceive, blindly adopted many technical rules of the English courts, without considering the reasons for their adoption, and how inapplicable they are in administering laws framed in a spirit of humanity, and furnishing every aid to the prisoner to secure a fair and impartial trial. The criminal code of this State is not only framed in a very different spirit from that of England, but throughout its various provisions it graduates punishment to the nature, aggravation and turpitude of the offense.

"A system of criminal law thus framed ought to be administered in such a manner as to be a shield to protect the innocent, and a sword to punish the guilty."

England did not reach this point, or begin to, until 1851, when Lord Campbell's act was passed, simplifying the indictment; and to-day, with all that may be said, we are a long ways ahead of English modes in the humanity and even tenderness with which prisoners are treated and tried, and the results which are reached are quite as satisfactory as the coarser and more degrading punishments to which the criminal classes have been subject.

Dr. Johnson, in the middle of the last century, alludes in one of his "Ramblers," to stated days when the prisons of the metropolis were emptied into the grave. And the fact is notorious that there were formerly more criminals yearly executed in London alone—though it did not contain then one half of its present population—than are now doomed to suffer throughout England. Pickpockets, shop-lifters and sheep-stealers, along with more atrocious criminals, were indiscriminately carted off by dozens and scores from Newgate to Tyburn,

and the horrid procession was attended by thousands of the multitude who, from long habit, viewed either with apathy, or with mere feelings of curiosity, the legal massacre.

It is not improper, therefore, to say that for the first draft of a law, this effort on the part of Judge Lockwood has been rarely equaled. What ground it did cover was very full and complete, but it has been constantly amended and added to in order to meet the varying changes of society. Crimes which are common now were wholly unknown when he first came to the State, and there are many defects which have come to light that must be provided for. The malicious setting fire to a prairie was then of more importance to the public than the wholesale robbery of a bank at the present day. The immense tide of immigration from Europe, which has for the last few years set toward our shores, and the ease with which the vicious classes pass from one country to another, has flooded our country and especially our large cities, with the needy of both sexes, and crime has increased among us in a most fearful ratio.

The existing state of things imperatively demands that we should not only have laws fully adequate to the protection of life and property, but that those laws should be so effectually administered as to bring upon the guilty certain and speedy punishment.

Elliott Anthony.

[We are promised an article by Judge Anthony, in continuation of this subject, for the January number.]

REPRESENTATIVE MEMBERS

OF THE CHICAGO BAR.

LYMAN TRUMBULL.

Our eminent fellow citizen, Hon. Lyman Trumbull, is a native of Connecticut. He was born at Colchester, Oct. 12, 1813.

He received his early education at Bacon Academy, in his native town. He commenced teaching school when sixteen years of age, and at twenty had charge of an academy, at Greenville, Georgia. Here he devoted his leisure hours to the study of the law, and in 1837, was admitted to the bar.

Immediately upon his admission he removed to Illinois, and commenced the practice of his chosen profession at Belleville, in St. Clair County.

In 1840, he was elected to the Legislature, and before the expiration of his term was appointed Secretary of State, which position he filled two years. He then devoted himself to the practice of his profession with great assiduity, and in a few years stood in the highest rank.

In 1848, he was made one of the first Justices of the Supreme Court of the State under the Revised Constitution. In 1852, he was re-elected for nine years, but in 1853 he resigned.

The following year Judge Trumbull was chosen to represent his district in Congress. Before he had taken his seat the Legislature elected him to the United States Senate for six years, commencing March 4, 1855. This exalted position he held for eighteen years consecutively, performing its duties with conspicuous ability and faithfulness, reflecting credit upon his State and upon the nation.

At the end of that time, he resumed the practice in this City, and for the last fifteen years, has quietly and unostentatiously continued in the performance of his professional duties. During that time many of the most important cases in the courts have drifted to him as chief or consulting counsel. The residents of our southern suburbs, as they go to and fro on the train, have been accustomed to see the grave, but pleasant face of the ex-Senator going to or returning from his office, and all who know him are assured of a genial recognition.

Though eminent and successful as a lawyer and a jurist, the United States Senate was the forum for which nature had specially and richly endowed him, and for which he had been happily fitted by all his previous education and experience. Cool, sagacious, self-possessed, far seeing, logical, thoroughly versed in constitutional law, intrepid in attack, and with wonderful readiness and skill in defense and repartee, he was one of the soundest and at the same time one of the most brilliant members of that august body.

It will be seen that the term of his service in the United States Senate covered the most important, the most exciting, and the darkest times in our history, since the organization of the national government. The administrations of Pierce, Buchanan, Lincoln, Johnson and Grant—The anti-slavery agitation—the formation of the Republican party, on the ruins of the old Whig party, with the Anti-Slavery, at that time the Free-Soil party as the basis—the repeal and nullification of the Missouri Compromise Act—the Dred Scott decision, and the excitement consequent upon these events, culminating in the election of the Great Commoner, Abraham Lincoln, and the consequent civil war—the triumph of the Union armies, and the restoration of peace—the assassination of Lincoln—the impeachment and trial of President Johnson—the elevation to the presidency of the military leader of the armies in the field—the adoption of the 13th, 14th and 15th Amendments to the Federal Constitution—the abolition of American slavery by the emancipation proclamation, by the progress of the war, the amendments to the Constitution and the reconstruction acts—these were the events which passed before the kaleidoscope of

time while Lyman Trumbull occupied his seat in the Senate of the United States.

In nearly all of them he was a prominent actor. His powerful voice was constantly heard, for justice, for liberty and for peace. Ever ready to support all proper measures for prosecuting the war while war was necessary, he was one of the first to welcome the return of peace, and in the reconstruction of the States, he held the scales of justice even, neither led too far by indiscreet zeal, nor failing to grapple, when necessary, any question which arose, and deal with it as the highest wisdom demanded.

During twelve years of this period, from 1861 to 1873, he was Chairman of the Judiciary Committee in the Senate, and in that capacity had charge of the reconstruction measures made necessary by the war. He drafted the 13th Amendment and the Civil Rights Bill and took a leading part in all the legislation of those exciting times.

The following extract from Senator Trumbull's speech in presenting the 13th Amendment, which he as chairman of the Judiciary Committee, had drawn as a substitute for Senator Henderson's Resolutions, is given as a specimen of the Senator's style:

"It is a proposition so to amend the Constitution of the United States as forever to prohibit slavery within its jurisdiction, and authorize the Congress of the United States to pass such laws as may be necessary to carry this provision into effect.

"Without stopping to inquire into all the causes of our troubles, and of the distress, desolation and death which have grown out of this atrocious rebellion, I suppose it will be generally admitted that they sprung from slavery. If a large political party in the North attribute these troubles to the impertinent interference of northern philanthropists and fanatics with an institution in the southern States, with which they had no right to interfere, I reply, if there had been no such institution there could have been no such alleged impertinent interference; if there had been no slavery in the South there could have been no abolitionists in the North to interfere with it. If, upon the other hand it be said that this rebellion grows out of the attempt on the part of those in the interest of slavery to govern this country so as to perpetuate and increase the slaveholding power, and failing in this that they have endeavored to overthrow the government and set up an empire of their own, founded upon slavery as its chief corner stone, I reply, if there had been no slavery there could have been no such foundation on which to build. If the freedom of speech

and of the press, so dear to freemen every where, and especially cherished in this time of war by a large party in the North who are now opposed to interfering with slavery, has been denied us all our lives in one half the States of the Union, it was by reason of slavery.

"If these Halls have resounded from our earliest recollections with the strifes and contests of sections, ending sometimes in blood, it was slavery which almost always occasioned them. No superficial observer even, of our history North or South, or of any party, can doubt that slavery lies at the bottom of our present troubles.

"Our fathers who made the Constitution, regarded it as an evil, and looked forward to its early extinction. They felt the inconsistency of their position; while proclaiming the equal rights of all to life, liberty and happiness, they denied liberty, happiness and life itself to a whole race except in subordination to them. It was impossible, in the nature of things, that a Government based on such antagonistic principles, could permanently and peacefully endure, nor did its founders expect it would. They looked forward to the not distant, nor as they supposed uncertain period when slavery should be abolished, and the Government become in fact, what they made it in name, one securing the blessings of liberty to all. * * *

"I know that the passage of this measure will not end this rebellion. I do not claim that for it. There is but one way to do that; and that is by the power of our brave soldiers. We can never have the Union restored, the authority of the Constitution recognized, and its laws obeyed and respected, until our armies shall overcome and vanquish the rebel armies. We must look to our soldiers, to our patriotic army, to put down the rebellion. But, sir, when they shall have accomplished that, this measure will secure to us future peace."—(Cong. Globe. 1st Sess., 38th Cong., Pt. 2, p. 1313.)

In the great impeachment trial, he felt constrained to differ with the majority of Republicans, voting against impeachment.

His differences with the Republican party and its leaders gradually widened until he found himself acting with the Democratic party, with which he had affiliated in the earlier part of his political career.

Had he remained in the Republican ranks, it is probable that still higher honors awaited him; but scarcely anything could have added to the renown of his long and illustrious career in the Senate.

In the summer of 1880, he was the Democratic candidate for Governor of Illinois, and in a speech made at Belleville, on the 30th of August of that year, he gave the reasons why he was then acting with the Democratic party.

He stated that the Republican party had departed from its platform of principles as announced in 1856 and 1860—that within the previous ten years many of the great Republican leaders had ceased to act with the party, and charged reckless extravagance and waste of the public money, especially during the second term of Grant's administration, claiming that Robeson had used more than a hundred millions of the public money and had left the navy no better than he found it.

He denied that the Republican party had suppressed the rebellion, giving figures to show how many Democrats had gone into the war, and drawing the conclusion that without their assistance the Union could not have been saved. He also denied that the Republican party abolished slavery, claiming that it was the result of circumstances, and stating that 16 Democrats voted for the 13th Amendment, without 13 of whose votes it could not have passed. He deprecated the interference of the Federal Government in the elections, by the appointment of hosts of marshals all belonging to one party, and stated that in New York thousands were illegally placed under arrest, and prevented from voting. He dilated upon the wrong perpetrated by the Electoral Commission, in seating Mr. Hayes in the Presidential chair, and called attention to the fact that nearly every person in Louisiana and Florida, who had decided in favor of the Republican electors, had subsequently been appointed to office by President Hayes. He claimed the Republican party was in favor of the centralization of power, and unwilling to preserve that balance between the Federal and State governments which had been established by our fathers.

It is not our purpose here to decide upon this indictment of the Republican party. We give it as showing Judge Trumbull's reasons, as stated by himself, for the political position he then occupied.

His ability and eminence as a statesman and constitutional lawyer have received fitting and graceful recognition from McKendree and Yale Colleges, both of whom have conferred upon him the honorary degree of LL. D.

Judge Trumbull was married June 21, 1843, at Springfield,

to Julia M. Jayne, who died at Washington, on the 16th of August, 1868.

His second marriage was on the 3d of November, 1877, at Saybrook, Conn., to Mary J. Ingraham. By his second wife he has one child, a little girl, now living.

From his first marriage there are three sons now grown to manhood—Walter, Perry and Henry. Perry is one of the law partners of his father, the firm being Trumbull, Willits, Robbins and Trumbull, and consisting of Lyman Trumbull, George S. Willits, Henry S. Robbins, Perry Trumbull and Charles L. Brooke.

Their Office is at 115 Monroe St.

Judge Trumbull is still in the zenith of his intellectual greatness. Of robust constitution, of temperate and regular habits, his mind was never clearer and more vigorous than it is to-day: and its constant exercise upon the questions which arise in a varied and important practice, will doubtless preserve it in in the same condition for many years to come.

JOHN N. JEWETT

Was born at Palmyra, Somerset County, Maine, October 8, 1827. His father was David H. Jewett. They were originally from New Hampshire. His father was a descendant of the family of that name, who early in colonial history settled in Massachusetts, and colonized in the vicinity of Rawley, in that State. His family moved to Maine about the year 1800, and about the same time there came from New Hampshire Daniel Gale, with his family, who settled in the same neighborhood. Of this family the mother of John N. Jewett was the youngest daughter. Religious, honest, intelligent and industrious, these were the worthy parents of a son who has honored and revered their memory.

Young Jewett's early life was spent in assisting his father in working the farm in Palmyra and afterward in the adjoining town of St. Albans.

During those years he had such advantages for education as the public schools of the neighborhood afforded, and at intervals the benefit of the instruction given at the St. Albans Academy. By utilizing these advantages he became fairly well prepared for college.

When he was eighteen years of age, before he had entered college, his father sold out all his little property in Maine, and removed with his entire family to the West, and settled near Madison, Wisconsin. On account of illness John came with the rest, and remained in Madison something over a year, meanwhile teaching school and pursuing by himself, without the aid of a teacher, the studies of the college freshman year. At the end of that time he returned to Maine and entered Bowdoin College as a Sophomore. He completed a full classical course, and graduated in 1850, having supported himself during the time by teaching. He was then employed for two

years as one of the principals in the academy at North Yarmouth, Maine. While teaching he devoted part of his time to the study of the law, for which he had a strong predilection; and it was in his avocation as a teacher that he was obliged to earn the money necessary to prepare him for the profession which he had chosen.

By the courtesy of a lawyer and friend living in the village, he was enabled to secure several elementary law-books, which he read carefully, thus becoming already pretty well grounded in the first principles of the law.

He now returned to Madison, Wisconsin, and completed his studies in the office of Collins and Smith of that City. After reading with them nine months, he was admitted to the bar of that State in 1853. He then removed to Galena, and having been admitted to the bar of the Supreme Court of this State, he practiced in Galena three years.

He then came to Chicago, and formed a partnership with Scates and McAllister, both of whom have been upon the supreme bench of the State. This firm ranked among the very highest in the City. It continued until 1863.

In 1870, soon after the adoption of the new constitution of the State, Mr. Jewett, who is a republican in politics, was sent to the State Senate. As a State Senator he sustained himself with ability and credit, and gave universal satisfaction to his constituents.

As a legal counselor, he is held in the very highest esteem, and the most important and valuable interests are committed to his care. By universal consent Mr. Jewett would be placed among the foremost in his profession in this City, though the number in the first class should be quite limited.

As a practitioner, he is ready, quick and capable, always equal to any emergency. In conversation he is pleasant and affable; in argument, analytical, logical and strong, sometimes indulging in pungent satire. He speaks tersely and to the point, in an attractive, forcible manner. Conforming himself to principles of the strictest integrity and to the most honorable dealing, he expects the same from those with whom he associates, or has business relations.

Mr. Jewett was married in 1855, to Miss Ellen R. Rountree, daughter of Hon. John H. Rountree, of Plattville, Grant County, Wisconsin, a marriage which has been to him a source of much happiness. His only children are his two sons who are now associated with him in practice. The name of the law firm is John N. Jewett and Jewett Brothers, the other partners being Edward R. Jewett and Samuel R. Jewett.

Office, 16 Reaper Block.

THOMAS DENT.

Thomas Dent has had an active connection with the bar of Illinois and that of Chicago. He was born in Putnam County, Illinois, Nov. 14, 1831, and was admitted to the bar in 1854, while residing at Hennepin, in that county. He soon entered upon a full practice, embracing the charge of a large proportion of the cases on the docket of the Circuit Court of the county in which he resided, and commercial and real estate causes in several other counties, in different circuits. Business was quite soon committed to his management, involving considerable amounts, and presenting questions of novelty and difficulty, requiring much research. His practice ranged through the different divisions of the docket. While chiefly on the common law and chancery sides of the court, the list did not altogether exclude criminal cases. As was usual with the bar at the time, it was a general practice, as distinguished from attention to a specialty.

The bar into which he entered embraced a number of very able lawyers. Various members of the highly distinguished bar of Peoria had customarily attended the court in Putnam County. The lawyers of La Salle County were also in the front rank as constituting one of the ablest bars of the State, and furnished leaders on the circuit to participate in the important trials. There were besides these some energetic and ambitious juniors, of prominence in other counties, already in the field to take the place of the older lawyers who, in some of the

larger and more wealthy counties, were finding sufficient employment at home without much travel on the Circuit.

Some avenues to political preferment, if he had sought favor in that way, were likely to open to Mr. Dent before he changed his residence. When still in his 21st year he was put forward by friends, with but slight acquiescence on his part, for the office of County Judge, on the happening of a vacancy which was to be filled by election; and nearly half the ballots bore his name upon them. But he was loath to enter upon a political career, and refrained from yielding to suggestions favoring his candidacy for another elective office. He, however, under appointment by the County Court, undertook and completed the work of making tract and other indices to the land records of the county.

He continued for several years to attend the courts in Putnam County, in closing up his business there, and meanwhile, in the year 1856, removed to Chicago, and together with M. R. M. Wallace, since a General in the Union Army, and later County Judge of Cook County, opened an office here. The financial crisis of 1857 involved some early clients of Mr. Dent in financial difficulties, and ultimately in litigation of a complicated and protracted character in the Federal and other Courts, extending over a period of years. To this he applied himself with his usual energy and industry, and with marked success.

In 1860, he became associated with the late Alfred W. Arrington, whose eminence at the bar was well earned; and this association was continued until the death of Judge Arrington, December 31, 1867.

Mr. Dent had a full share of the general work in the practice of Arrington & Dent, in Chicago, and in the Supreme Court of the State. Among the cases tried by them jointly was one in which Rev. Hart L. Stewart was defended by them. It attracted much attention at the time.

In March, 1868, William P. Black, then of Danville, Illinois, and formerly a student in the office of Arrington and Dent, became associated with Mr. Dent, and they remained together until a recent date.

Mr. Dent was attorney of the Chicago Board of Trade for some years, and has also at times represented banks, insurance companies, and other corporations, in important cases which have gone through the courts, and a number of which have been reported. Besides being called into the preparation and trial of causes in various parts of this State, he has participated in the trial or argument in courts of final resort, of causes in other States. The reports show that he has had occasion to meet in association in causes, and in competition at the bar, men of the highest eminence and distinction in the profession. In the reported cases which he has argued in the Supreme Court of Illinois, the Supreme Court of the United States, and other courts whose decisions have been reported, there is diversity, corresponding with the general character of his practice. They range through various branches of the law.

He has acted with the Republican party from its organization in this State, especially upon National and State issues, and in 1879, was the nominee of that party for Judge of the Supreme Court for the Seventh District. He was well supported, having a majority in the District as a whole, aside from a few wards in Chicago, which, from local influences turned the scale; chiefly by the union with the democratic strength of the socialistic party, which was then well organized for political work, and plumped a large vote in those wards. His nomination at the time may be said to have resulted from a movement of his party to place in the field a full ticket, with reference more especially to the vote of Cook County for other positions in that county which were to be filled at the same election. Mr. Dent had, without solicitation on his part, received the compliment on a prior occasion, of flattering support, upon the withdrawal of another gentleman, in a convention of his party called to make a nomination for the same office.

He has joined with his brethren of the bar in organizations of special concern to the profession, and has been President of the Chicago Law Institute, and is President of the Illinois State Bar Association. He has manifested, also, a lively interest in benevolent and educational work, and in social affairs.

Among the recently reported cases argued by him, are those

of White v. Barber, 123 U. S., 392, in which some important questions arose, relating to Board of Trade contracts and dealings.

In 1857, Mr. Dent was married to an estimable lady, Miss Susan Strawn, of Putnam County. They met with a most heavy affliction in the death of their only daughter, Miss Mary Dent, a beautiful and promising young lady, who was attacked with typhoid fever, at Milan, Italy, while traveling in that country, and who expired in February, 1882, just before the arrival of her parents.

Mr. Dent's standing in the profession is of the very highest. Cool, careful and discriminating, of clear intellect and sound judgment, he is eminently fitted as a counselor, in which capacity, few if any rank higher.

The firm is Dent & Smith. The junior member, Mr. Edwin Burritt Smith, is Reporter of the Appellate Court.

Office, R. 49—115 Dearborn St.

HARVEY B. HURD

Is a native of Huntington, Fairfield County, Connecticut, and was born February 14, 1828. His father, Alanson Hurd, was of English descent. His mother was Elizabeth Lowe, of Dutch and Irish descent.

Young Hurd worked on his father's farm until his fifteenth year, during the winters attending the district school.

At the age of fourteen wishing to strike out and do something for himself, he went to Bridgeport, and entered the office of the "Bridgeport Standard," as "printers devil." In the spring of 1844, he went to New York and remained there until fall. Returning to Bridgeport, he started, soon after, with ten other young men, for Peoria County, Illinois.

There he entered Jubilee College. After remaining a year he went to Peoria, but not finding employment there, took passage in a baggage stage for Chicago. He arrived here with 50 cents in his pocket. To-day he is a wealthy man.

He at once obtained work on the "Chicago Evening Journal," then published by Wilson & Geer, and afterward was engaged in the office of the "Prairie Farmer."

In the fall of 1847, he began the study of law in the office of Calvin DeWolf, and was admitted to the bar in 1848. He began the practice with the late Carlos Haven, who was afterward States Attorney. He afterward formed a partnership with Hon. Henry Snapp, late member of Congress. In 1850, he formed a connection with A. J. Brown, which continued until 1854.

This firm laid out the town of Evanston. Mr. Hurd was one of the first to build a handsome house there in which he still resides.

Mr. Hurd was an abolitionist, and took an active part in the events immediately preceding the formation of the republican party, and which resulted in that great political event. He was one of the foremost among those who were aiding to make Kansas a free State, and served in various official capacities in connection with that movement.

In 1862, Mr. Hurd formed a law partnership with Henry Booth, afterward Judge of the Circuit Court, and at the same time accepted a position as lecturer in the law department of the University of Chicago. This partnership continued, with several changes by the admission of junior partners, until 1868, when he withdrew from the firm with the intention of retiring from the practice of his profession.

In April, 1869, he was appointed by the Governor and State Senate one of the three commissioners to revise and rewrite the general statutes of the State. From various causes, the labor came more and more upon the hands of Mr. Hurd, and finally devolved upon him entirely. The work which resulted is known as "Hurd's Statutes."

It has passed through several editions, since the State edition of 15,000 volumes was published. The labor was immense and was satisfactorily performed.

In 1875, he was again elected to a chair in the Law School, which had then become the Union College of Law of the University of Chicago and the Northwestern University, and he

now fills the position of Professor of pleadings, practice and statutory law in that institution.

At the special election held in December, 1875, Mr. Hurd was the republican candidate for Judge of the Supreme Court, but was defeated by the late T. L. Dickey.

As a lawyer, Mr. Hurd has long maintained a high position at the bar, his forte being the argument of legal questions to the court. His style in speaking is deliberate and argumentative. In the preparation of his cases he is careful and exhaustive, and he is eminently a safe adviser. As a teacher in the law school, he is accurate, methodical and thorough.

Mr. Hurd is an indefatigable worker. He possesses great tenacity of purpose, force of will, and physical as well as mental endurance. It is by virtue of these qualities that he has raised himself from small beginnings to his present eminent position.

His office is at Room 22—95 Dearborn St.

Mr. Hurd is at present taking a leading part in the promotion of the Lakes and Gulf waterway, and the "Desplaines System" of sewage disposal. The plan which he advocates is a wide and deep channel from Lake Michigan at Chicago to the Desplaines River at the Summit and thence in the bed of the Desplaines to Joliet, whence the water will flow of its own accord down the Desplaines into the Illinois River, and thence into the Mississippi. The quantity of water which will be carried through this channel (600,000 cubit feet per minute) he considers enough, with proper locks and dams between Joliet and La Salle, to create a navigable way of sufficient capacity for the largest lower Mississippi River steamers. This quantity of water will also, he thinks, be sufficient to carry away the sewage of Chicago, and the towns along the stream, so diluted and changed that it will be rendered inoffensive and substantially unobjectionable. He thinks the water in its passage will soon purify itself. Mr. Hurd does not claim to be the originator of the plan of uniting the Lakes with the Mississippi by an enlarged waterway, nor of this mode of sewage disposal; but he is entitled to the credit of having proposed a feasible plan on the part of Chicago for raising the money

necessary to do its part of the great work. It was his suggestion upon this point that led to the appointment by the City of the Drainage and Water Supply Commission, consisting of Rudolph Hering, chief engineer, and Benezette Williams and S. G. Artingstall as consulting engineers, whose recommendations are now being followed.

He is also entitled to the credit of having organized the movement and put the matter before the public in a shape to meet general approbation.

Mr. Hurd is the author of what is known as the Hurd Bill in the last General Assembly, and conducted the efforts on the part of Chicago to secure its passage. A large mass of testimony was taken under his direction before the joint committee of the Senate and House charged with the investigation of the effect the proposed manner of sewage disposal would have upon the Desplaines and Illinois Rivers, and although it was understood that at the outset a majority of the committee was adverse to the bill, it finally made a unanimous report in favor of its passage.

Mr. Hurd has also been active in advocating the measure before Congress. The River and Harbor Bill, which has just been passed by Congress, contains a clause providing for the necessary surveys, plans &c. for locks, dams and improvements of the Illinois and Desplaines Rivers, and channel connection upon the enlarged scale advocated by Mr. Hurd.

This is the beginning of the most important public work ever entered upon by the General Government; the union of the two great systems of water transportation, that of the Great Lakes with that of the Mississippi and its tributaries, an accomplishment that any one may well be proud of having participated in bringing about.

JAMES H. ROBERTS

Is one of the very few lawyers of this City who has become eminent in his profession, who is a native of Illinois.

His father, Edmund Roberts, emigrated from New Hampshire to St. Genevieve, Missouri, as early as 1810. Shortly afterward he removed to Kaskaskia, Illinois, and here James H. was born, December 12, 1825. The ancestors of Mr. Roberts on the mother's side were Gibsons of Pennsylvania. One of this family was Chief-Justice Gibson of that State.

Kaskaskia, when Mr. Edmund Roberts moved into it, was a place of importance. It was the seat of government of the Territory, and afterward of the State. Here at different times, resided Ninian Edwards, Governor of the Territory, Nathaniel Pope, Secretary, afterward Territorial Delegate in Congress and United States District Judge, Sidney Breese, Elias K. Kane, U. S. Senator, Colonel Thomas Mather, and many others, eminent as statesmen, judges and legislators.

At a very early age James attended a school taught by Hubbell Loomis, a clergyman, graduate of Union College, N. Y., who was afterward President of Shirtleff College

About 1832, Mr. Edmund Roberts removed with his family to Springfield, Ill. Here young Roberts had an opportunity to see, occasionally, some of the most distinguished men of the country.

His father had been acquainted with Daniel Webster in New Hampshire, and in Springfield the acquaintance was renewed. James became deeply interested in the debates between Douglas, Stuart, Lincoln, Baker, Calhoun and others, and attending the Courts at the same time, he became fired with ambition to become a lawyer. He heard Justin Butterfield make his celebrated plea for Joseph Smith the Mormon Prophet. Many Mormon dignitaries were present, and Butterfield, glancing around him, at the brilliant array of ladies, commenced thus:

"May it please the Court: Surrounded by priests and apostles, I arise to address the Pope, in defense of the Prophet of the Lord."

Mr. Roberts graduated from McKendree College, Ill., in 1848. In the winter of 1847–8, during an intermitted term of College, he attended a law school at Transylvania University, Lexington, Kentucky. He then read law in St. Louis, under the instruction of Hon. Edward Bates, Attorney General during Lincoln's Administration.

In 1849, Mr. Roberts was admitted to the bar, and immediately commenced practice, forming a partnership with Joseph G. Bowman, at Vincennes, Ind. In that Circuit he practiced for five years, riding the circuit with Bowman. Linder, Constable and other eminent lawyers. Mr. Bowman's house was a seat of large hospitality, and among those whom he was accustomed to entertain was William Wilson, formerly Chief-Justice of Illinois, a man of brilliant conversational powers. The Vincennes Bar ranked high, and among its members were Samuel Judah, Samuel B. Gookins, Wm. E. Niblack, Benjamin M. Thomas and Alvah P. Hovey. There was much litigation concerning land titles, which made this a peculiarly profitable school for Mr. Roberts.

His practice sometimes took him into Edgar County, where he would meet Judge Davis, Mr. Lincoln and others.

In 1851, Mr. Roberts graduated from the Law Department of the Louisville University. Among the alumni were John A. Logan, Wm. J. Allen, Murray F. Tuley and Richard J. Oglesby.

In 1855, Mr. Roberts removed to Chicago, and formed a partnership with Benjamin M. Thomas, then U. S. Attorney for Indiana. In 1856, Robert S. Blackwell, one of the most brilliant members of the Illinois bar, was taken into the firm, which now had a large practice. This firm was dissolved in 1858, and was reorganized, Judge Samuel B. Gookins, who had resigned from the bench of the Supreme Court of Indiana to practice law in Chicago, taking the place of Mr. Blackwell. Mr. Thomas died in 1864; Judge Gookins, in 1880. After Judge Gookins had returned to Indiana, Mr. Roberts formed a

partnership with Jonas Hutchinson, a good lawyer and a genial gentleman, and afterward Morris S. P. Thomas was added to the firm, which is now, Roberts, Hutchinson and Thomas.

Mr. Roberts has been a hard worker, and some years since, the effects of constant and unremitting labor in his profession began to become apparent in impaired health; though he toiled on until 1880.

About that time he relinquished the active practice to his partners, and having acquired a competency, he is now able to devote more time to literary pursuits, than it was previously possible to do. He spends much of his summers at his country place at Old Mission, Michigan.

The character of the business done by the various firms with which Mr. Roberts has been associated, will be seen from the Reports of the Supreme Court of Illinois and of the United States. Among the more important cases were Fisher v. Stone, in which Mr. Roberts was associated with Thomas Hoyne, and opposed by John Van Arman and H. S. Monroe. The medical witnesses were the eminent men of the eastern schools as well as those of Chicago. Also the corn planter cases tried before Judges Drummond and Treat sitting together, and which were afterward argued in the Supreme Court of the United States; the South Park condemnation cases, &c. He was admitted to practice in the Supreme Court of the United States, in 1864, and at that time argued his first cases in that Court.

Mr. Roberts has had his full share of litigated cases at our bar. He has worked faithfully at all branches of the profession, having friendly collisions with many of his professional brethren, but maintaining the most amicable relations with all. Nearly all of the leaders of the bar in 1855, who were his seniors in age, have departed, and many of his former more youthful associates. When he shall be called upon to render up his stewardship, there will not be wanting those to do him honor, though but few can pronounce such eloquent words as Mr. Roberts himself has spoken on similar occasions.

Not less accomplished as a scholar and an orator than learned and able as a lawyer, Mr. Roberts is a man whose presence is a treasure to any bar. He has the rare faculty of seizing at

once the strong points of a case, extricating them from the rubbish by which they may be surrounded, and making a clear and attractive presentation of them to the court and the jury. This he does with such manifest sincerity, that he has a favorable hearing at once. His address is polished and courteous, and there are few if any who have more influence with the Court—an influence which is due to his recognized high standing as a lawyer and a gentleman.

Office of the firm of Roberts, Hutchinson and Thomas, is at Room 92—191 La Salle St.

MATTHEW P. BRADY

Was born June 5, 1849, in Liverpool, England, and is the son of Owen J. and Mary A. Brady, who emigrated to this country over twenty years ago, and settled in Cass County, Illinois.

Matthew P. studied in Liverpool under private tutors, notably for six years with Martin A. DeLaney, a man celebrated for his classical learning, and a graduate of Carlow College in Ireland. Afterward, up to the time of his coming to America, young Brady attended the Institute of St. Philip Neri, at Mt. Pleasant, near Liverpool, one of the classical institutions of the oratory presided over by his eminence, Cardinal Newman.

In 1865, Mr. Brady, senior, came with his family to America. Matthew P. had an uncle in Chicago, who was desirous of educating his nephew in the legal profession, and persuaded him to come to this City. His uncle died soon after his arrival, and Matthew was thrown upon his own resources. He remained faithful, however, to his uncle's purpose.

After taking a commercial course in Bryant & Stratton's Business College, Brady secured a deputy clerkship in the Superior Court, which position he held until the spring of 1868. While thus engaged, he was constantly pursuing his legal studies. He entered the Law Department of the Chicago University, and graduated therefrom in 1870. In the summer of

1871, he was admitted to the bar. Mr. Brady then became connected with the firm of Grant and Swift; having special charge of drawing the pleadings in contested cases.

In May, 1880, he was taken into partnership; the firm being Grant, Swift and Brady. Afterward it was Grant and Brady.

He was married in 1882, to Cordelia A. Hansen, of New York City.

After the death of the lamented Mr. Grant, which occurred in September last, Mr. Brady formed a partnership with George W. Northrup, jr. The firm is now Brady and Northrup, and the office is at 107 Dearborn St.

In May, 1885, Mr. Brady, with others, organized the Irish-American Republican Club of Cook County, of which he was made President.

In the early part of June last, there was a meeting of the Irish of this City, who had become somewhat excited over the rescript of the Pope, advising against violent resistance by the tenants in Ireland, to the collection of rent, and to the attempts at eviction.

Mr. Brady was one of the principal speakers on that occasion. His address was characterized by all the vivacity—the quick apprehension and clear statement—the fervor of patriotism—the easy flow of language—the earnestness and enthusiasm of the genuine Irish orator. After commenting upon the steadfastness and devotion of the Irish people in former times, to the Catholic faith, to St. Peter, and to the Roman pontiff as his successor, and their obedience to his decisions and decrees in matters of faith and morals, he proceeded as follows:

"But what if the pope utter an edict or make a pronouncement upon a question of morals, basing his edict or pronouncement upon mistaken facts, or facts imaginary only, or a state of case which is not sustainable by evidence admissible in a court of justice? In that case I am at liberty to pay no more respect to the utterance of the sacred pontiff than I would to the ipse dixit of an ordinary man, whether he be a judge of the court or an ordinary justice of the peace. This doctrine of infallibility, as applied to the holy church, is not properly understood, I regret to say, by a great many people. If the pope make a mistake in the premises upon which he builds his edict, his edict is a nullity. Now, what are the facts in this papal intervention in the struggle of the Irish people? That I may make no mistake I will read you what the Sacred college itself has said. [The

speaker here read that portion of the rescript referring to the relation between the landlord and tenant as a contract.]

"Now, if such were the relation, I would not be here to-night to question or criticise this rescript of his holiness. I said you would notice that this rescript is justified on the ground that the contract between the landlord and tenant in Ireland is by mutual consent. I say with all becoming respect—and that is to say with all necessary respect, such respect as becomes a man of ordinary intelligence, being a citizen of a free country—with that kind of respect I say that the Vatican is lamentably, egregiously, and manifestly mistaken. I say that it is notorious throughout the three kingdoms, as they are called, and throughout the civilized world to-day that the relation between the Irish landlord and the agricultural tenant is not the result of mutual consent. What mutuality of consent is there or can there be between the lamb and the ferocious wolf that devours it? * * *

"Suppose a burly ruffian, with the instincts of a brute and actuated with a spirit of demoniacal revenge, should seize a little boy, one of your infant sons, by the body, and hurl him to the ground, and bury his wicked fingers in his throat, and perhaps with his cruel knees upon his tender breast, and the little boy by the touching of a little fuse could hurl the burly ruffian or assailant off and save his life. would he not be justified in doing it? Would he not be justified in doing so by the sacred law of self-defense? Of course he would, and the proof that he would is this: He would need no teacher to inform him that he had a right to avail himself of that means. Now suppose, while the ruffian has the child prostrated, some friend of the ruffian, some scoundrel who really desired to see the little innocent boy butchered, should hasten off to some power, whose mistaken tenderness might operate as a stay or injunction upon the little fingers of the little child, and inform that power that unless it intervened, the burly ruffian, in this death struggle with the child, would be killed, or that the child would be delivered from death at his hands; and that power, no matter what name it may be known by, should issue that injunctional order, think you that child ought to obey it? Wouldn't the voice of God, the holy voice of nature, cry louder in that child's conscience, mind, and ears, to resist and repel the assault of the ruffian, than the voice or authority of the injunctional order? Of course it would. A thousand to one the injunction of nature would be obeyed and the injunctional order of unwarranted authority would be treated with contempt. And why treated with contempt? Because it would be in opposition to the law of nature. And that is precisely the condition of the rescript issued by the Sacred College."

It will be seen from these extracts that the cause of Ireland, in her present struggle for liberty, has no bolder or more eloquent advocate in this country than Mr. Brady. He is very popular among his countrymen; so much so that he finds it difficult to prevent the political pressure from interfering with his professional duties. He is determined, however, to give

the law the preference: maintaining the prominent place he has already acquired in the profession, and seeking to win therein still higher laurels.

BENJAMIN J. WERTHEIMER

Is a fair representative of the younger members of the profession in our City, who are in the pathway of success.

The practice of the law in Chicago, is no longer such a rough-and-tumble fight as it once was. Every thing is conducted in a more systematic manner, and he who enters the race with any prospect of winning, must be pretty well equipped at the start. He must depend upon something more than native ability. Though that is still essential, the contestant must have a good education, and be well versed in the principles of the law.

These requisites are possessed by the subject of this sketch. He was born at Troy, Miami County, Ohio, in the year 1854.

He attended the public schools of his native place, and graduated from the High School, in which he was fitted for College.

In 1872, he entered Dartmouth College, and having gone through the classical course, graduated from that institution in June, 1876.

He then went to Europe, and studied in Gœttingen and Leipsic two years. When leaving college he contemplated pursuing the profession of a journalist, but afterward changed his purpose. From Leipsic he went to Paris and studied the Code Napoleon, in *l'Ecole de Droit.*

Returning to America, Mr. Wertheimer entered the Law Department of the Washington University, in St. Louis, where he received the degree of Bachelor of Laws. While in St. Louis, he read law in the office of Henry Hitchcock, Dean of the Faculty of the Law School. At that time, and while commencing the practice in that City, he supported himself by making translations from the German, French, and Italian languages. At that time he had an office with the son of Chancellor Eliot.

In 1884, he was married to Bertha Wampold, daughter of Louis Wampold, a well known wholesale merchant of this City, and soon after opened a law office in Chicago.

In St. Louis, he had some important cases involving the law of corporations, and he has a taste and an aptitude for that department of practice.

Mr. Wertheimer is a man of fine parts, and of much promise, and possesses the confidence and esteem of his fellow citizens.

Office, 28 Major Block.

Mr. Wertheimer was lately chosen a member of the Committee appointed to make arrangements for celebrating the four hundreth anniversary of the Discovery of America.

JOHN A. JAMESON

Late Chief-Justice of the Superior Court of Chicago, was born at Irasburg, Orleans County, Vermont, January 25, 1824. His father, Thomas Jameson, was for many years sheriff of Orleans County, Vermont, and a member of one of the Constitutional Conventions of that State.

John A. in early life had to rely mainly on his own efforts in order to obtain a suitable education. Having succeeded in completing his preparatory studies, he entered the Vermont University, at Burlington, from which institution he graduated, with high rank, in the class of 1846. This university afterward conferred upon him the degree of LL. D.

After leaving college he taught school in Canada, some four years, and was subsequently tutor in Vermont University two years, teaching languages and mathematics. During all these years he lost no opportunity for self-improvement. He is a competent linguist, and has a good knowledge of ancient and modern literature.

He attended the Dane Law School of Harvard College, and read law at Burlington, Vermont, where, in 1853, he was admitted to the bar.

Soon afterwards he removed to Chicago, with his classmate

in the law school, Homer N. Hibbard, with whom he formed a partnership. The firm soon after removed to Freeport. Some years later Mr. Jameson returned to Chicago, and formed a new partnership with Paul Cornell, an old and well known citizen of this City, who organized the firm of Cornell, Jameson and Bass. This firm was afterwards Cornell, Waite and Jameson, and Cornell, Jameson and Hibbard, and finally by the retirement of Mr. Cornell, became again Jameson and Hibbard.

In 1865, he was elected a judge of the Superior Court of Chicago. This position he held for three successive terms; in all, eighteen years, being elected always by large majorities. He brought to the bench a thorough knowledge of law and a wide range of learning. He was candid and cautious, and clear in statements, and had the independence to decide according to his best judgment.

He has always been exceedingly diligent in research, and while upon the bench was an attentive listener to what counsel had to say, to which he gave due consideration, before passing judgment.

As a judge, he was occupied principally in the trial of chancery causes. Among those decided by him were some which involved principles new in the jurisprudence of the country.

One of the most important and novel cases decided by him was that of *Roth v. Roth*. The case will be found reported in 104 Ill., 35.

The question presented for decision was, whether a marriage contracted in the State of Illinois, valid and binding there, could be declared a nullity by the courts of another country, and, if so declared, whether the courts of this country were bound to recognize such a judgment, which was manifestly in the face of the laws of Illinois, where the marriage was good; and whether the marriage of the husband with a second woman would be considered by the courts of this country as a valid marriage, because valid in the foreign country where entered into. Judge Jameson rendered an exhaustive opinion, which involved almost wholly what is known as private international law, deciding in favor of the second marriage.

No case was found, either in England or America which involved these questions, and hence the case has become a leading one, all the propositions laid down by Judge Jameson in his able opinion having been confirmed by the decision of the Supreme Court of the State of Illinois.

In Bruit v. Yeaton, previously heard by the Appellate Court on demurrer to the bill, and reported in 4 Bradwell, 579, as Yeaton v. Yeaton, which came afterwards before Judge Jameson, for final hearing, some questions were raised which were entirely novel in this State.

1. Whether on a bill by husband and wife against the trustees in their marriage settlement, the interests of unborn children could be affected by the decree.

2. Whether a conveyance by the husband and wife duly acknowledged but not otherwise witnessed, was a valid execution of a power reserved to the wife in the marriage settlement which provided that such conveyance should be attested by three witnesses.

3. Whether equity would aid a defective execution of the power in favor of the husband, or purchasers from him for value.

Judge Jameson in a learned and able opinion, decided all these questions in the negative, and was sustained by the Supreme Court. See Breit v. Yeaton, 101 Ill., 242.

The following statement of another very important opinion of Judge Jameson has been made by Chief-Justice Fuller, who was of counsel in the case:

In Cheney v. Chase, et al., Judge Jameson granted an injunction in favor of a clergyman of the Episcopal Church against the members of an ecclesiastical tribunal, (so called), which it was alleged was organized and proceeding contrary to the law of the church to a self executing judgment which would result in depriving the complainant of his means of livelihood.

Judge Jameson held that in law, churches in this country were mere voluntary associations founded on contract, that the decisions of their judicatories could not be conclusive as to the existence and extent of jurisdiction, and that courts could not decline the investigation into the terms and conditions

of such contract where civil rights were involved, and the according of redress for the violation of such rights. The decree was reversed by the Supreme Court, Lawrence, Chief-Justice and Sheldon, Justice, holding, however, that the secular court should "examine the question of jurisdiction without regard to the decision of the spiritual court itself; and if they find such tribunal has been organized in defiance of the laws of the association, and is exercising a merely usurped and arbitrary power, they should furnish such protection as the laws of the land will give." This was exactly the view expressed by Judge Jameson whose ruling has been gradually but finally accepted as correct. The case attracted great attention at the time both in this country and in Europe.

In 1875, the City of Chicago adopted, by vote of the electors, an act of the legislature passed in 1872, providing for the incorporation of cities and villages. The adoption of the act and the organization of the city in accordance with its provisions, changed materially the mode of condemning private property for street and other municipal purposes, and also the modes of making, levying and collecting special assessments to defray the expenses of public improvements, and, consequently, gave rise to many new and very important questions. It fell to Judge Jameson's lot to place a construction, in condemnation and assessment proceedings, upon many of the provisions of the act of 1872. This involved great responsibility, as the act was a general law under which other cities of the State were organized, and under which all cities might become organized. The first decisions under the law, therefore, naturally and necessarily, became precedents throughout the State. Judge Jameson displayed great ability, legal acumen and tireless industry in the elucidation and decision of the questions raised in the litigation under this act. His decisions were uniformly sustained by the Supreme Court, and the cases affirming his decisions are to-day the leading cases on the questions to which they relate.

Judge Jameson was for some years, while on the bench, assistant editor of the "American Law Register," and in 1866, published a book, entitled "The Constitutional Convention; its

History, Powers and Modes of Proceeding;" a work evincing much research, and containing a mass of information, of the utmost practical value. Judge Jameson in thus, for the first time, digesting, arranging and methodizing all the facts connected with the history of constitutional conventions in this country, has given the profession a work of inestimable value, of which a fourth edition was issued in 1887. This work was received with much favor both in this country and abroad, as the first and a successful attempt to grapple with the subject of the nature of the American constitutional system as a whole. The New York Nation declared, that the work "filled a complete vacancy in our legal literature; that it was very well written, in a dignified but easy style;" that it was "very far from being dry or tedious;" that "to a lawyer it was almost as entertaining as light reading." The North American Review maintained, that the plan of reconstruction pointed out by the author in his first edition as that which was liable to the least legal objection, was the plan adopted by Congress in its legislation of 1867, In England, the Spectator, premising that jurisprudence had been the science in which America had accomplished the most solid and enduring success, declared the author's treatise "to be not unworthy of his country's reputation;" and the French publicist, M. Edouard Laboulaye, in an article in the *Revue des Deux Mondes*, said of it, that "for its historical documents, and the solidity of its conclusions, it might sustain a comparison with Story's Commentary on the Constitution of the United States."

This work was also favorably reviewed by the Chicago Tribune and other papers of this City, and by Eastern journals.

Judge Jameson is a good writer and a ripe scholar.

He resides in Hyde Park, of which flourishing and rapidly growing suburb, he was one of the first settlers, having purchased property in the Village some thirty years ago, which he has ever since retained.

In 1855, he married Eliza Denison, daughter of the late Dr. Joseph A. Denison, Jr., of Royalton, Vermont. Mrs. Jameson is a very intellectual and thoroughly accomplished lady, and among her many friends and acquaintances is highly esteemed.

Judge Jameson has at various times held other official positions, and is now President of the Village of Hyde Park. In that capacity he has shown a good deal of moral courage in enforcing the State law requiring saloons to be closed on Sunday.

He has, since leaving the bench, organized the law firm of Jameson, Marston and Augur, the other members of which are Thomas B. Marston and W. W. Augur.

Office, 204 Dearborn St.

FREDERICK S. WINSTON.

The roll of the bar of Chicago presents the names of men whose genius piloted to success many of the daring enterprises which have given this city its unchallenged eminence among the commercial centers of the world. Upon this roll are found the names of lawyers whose fame has overleaped the boundaries of city and State, and is not confined by even national lines.

These were the veterans of the profession. For many of them the day has passed into night. In the forum which once echoed with their eloquence, their voices are silent, and in the councils whose acts took shape from their words, they live in memory alone. For those who remain, the lights are going out, and the time must soon come when they, too, shall be of the past.

With such a record in view as that of the Chicago bar, one looks with interest upon the young oaks that are pushing up and branching out to fill the places of the giants that have fallen.

Frederick Seymour Winston, the son of Frederick H. and Maria Dudley Winston, was born at Frankfort, Ky., on the 27th of October, 1856. Before the close of the year the family removed to Chicago, and until 1873 the subject of this sketch resided here with his parents.

This space of sixteen years covers what might appropriately be termed the formative period of Chicago's greatness, for in it

the germ was budding of the glorious development of later years. In the atmosphere of progress, of intelligently applied energy, and of faith in the future which characterized the young metropolis, the boy grew toward manhood, absorbing the inspiration of his environment.

Finishing his preparatory studies at the age of sixteen, he entered Yale College in 1873. Here he applied himself with such diligence to the collegiate course that he received his degree on three years study, having left college sometime before the expiration of his senior year, his standing justifying this unusual departure from the rules.

After leaving Yale, Mr. Winston for a year pursued his legal studies at the Columbia Law School in New York, and was admitted to the Illinois bar at the June term of the Supreme Court in 1878.

Immediately after his admission to the bar he became the junior member of the law firm of F. H. & F. S. Winston. In 1881, he was appointed Assistant Corporation Counsel of the City of Chicago. He occupied this position until November, 1883, when he received the appointment of Acting Corporation Counsel. The duties of the office—involving the weighty responsibility which rests upon the legal adviser of the city government—were discharged with such conspicuous ability, that in April, 1884, Mr. Winston was confirmed as Corporation Counsel without a dissenting voice by the City Council.

The appointment to this important office of a lawyer but little more than twenty-seven years of age was an extraordinary tribute to his legal attainments and maturity of character, and the results of his administration fully justified his advancement to the position. During the period in which Mr. Winston remained at the head of the city law department, he was called upon to deal with questions of an exceedingly complicated and delicate nature, and their uniformly successful issue, as shown upon the records of the department, and in the reports of the Federal and State Courts, demonstrated his eminent fitness for the position.

Among the cases argued by him which especially attracted the attention of the public are, the decision of the United

States Supreme Court establishing the power of the city to close the bridges over the Chicago river against vessels engaged in inter-state commerce; the several cases confirming the right of the municipality to license and regulate trades and occupations; the decisions of the Supreme Court of the State construing various provisions of the city charter, and those sustaining the divers enactments of the City Council.

In May, 1886, he resigned his office in the city government to accept the position of counsel for the Michigan Central Railroad Company, which he still retains. The offices are at 185 Dearborn St

In 1876, Mr. Winston was united in marriage with Miss Ada Fountain, of New York City.

In person Mr. Winston is tall, of full habit and dignified carriage. In mind, he is, by birth-right and by education, given to that broader flight which regards principles first and methods afterward;—a happy combination which makes him a dangerous antagonist to the legal practitioner who pursues the opposite course. His mental equipoise is seldom disturbed, and, in consequence, he is admirably qualified to sit in judgment upon the questions brought before him for solution. A marked feature of his character is the staunch loyalty with which he stands by his friends. A mere acquaintance may not readily discover this fact, but a friend, in the true meaning of the term, will never have occasion to doubt it.

By heredity and conviction Mr. Winston is a Democrat, but he is of sufficient breadth of gauge to believe that some good may come out of the Republican Nazareth. With two centuries or more of American ancestry behind him, he has not been contaminated by his travels in Europe, but returns from each visit to the old world a firmer believer than ever in American institutions.

At the age of 32, when perhaps a majority of lawyers in practice are struggling for a foot-hold, Mr. Winston has fought his way forward, and has fairly earned the position which he now occupies, in the front rank of his profession, with all the possibilities of a promising future before him.

E. RAYMOND BLISS

Our present County Attorney, was born in New Brunswick, New Jersey, September 3, 1847. His father was George Ripley Bliss, D. D., an author and professor of theology in the Upland Seminary, in Pennsylvania. His mother was Mary A. Raymond, daughter of Eliakim Raymond, of New York.

E. Raymond received primary instruction at Lewisburg, Pennsylvania.

He came to Chicago in 1863, but in 1870 returned East and attended the Columbia Law School, in Washington, D. C. In 1873, he graduated from this institution and was admitted to the Washington bar.

Upon returning to Chicago, in 1876, he engaged in the practice of the law. In 1880, he entered into a partnership with Leander D. Condee, under the firm name of Condee and Bliss. The firm, by conducting some important cases to a successful issue, soon obtained a good position in the profession.

September 1, 1882, he was appointed County Attorney by the Board of Commissioners of Cook County, and since that time he has been better known in his official capacity. He has served with ability and to the satisfaction of the public, protecting well the interests of the County, insisting upon its legal rights, but, by deciding against the County when necessary, preserving it from useless and harassing litigation.

At the time of the re-appointment of Mr. Bliss as County Attorney, in the fall of 1886, the "boodlers" had exhausted every resource of the County. The results of mismanagement for several years, culminated about January 1, 1887, in absolute bankruptcy. The tax levy for expenses in '86 was exhausted in June, and the levy for the expenses of 1887, had been anticipated even before it was made; so that on the first of January, 1887, liabilities had been contracted to such an amount, that if recognized, not a dollar could be had for the current expenses of '87. There were, on the first of January,

1887, over a million of dollars of warrants and claims outstanding, and not a dollar in the treasury.

Under these circumstances Mr. Bliss was called upon for counsel. He examined the question carefully, and gave an elaborate opinion, the substance of which was,

1. That the tax levy was intended to cover the current expenses for the year for which levied, and that the Board could not expend the whole in less than the fiscal year and then draw against the next levy.

2. That the Board could not issue warrants payable on demand, when there was no money in the treasury at the time to pay them.

3. That County warrants, even when drawn in conformity to law, have none of the elements of commercial paper.

Hence all the outstanding warrants, even in the hands of third parties were illegal and could not be enforced against the tax levy of 1887.

This opinion, given to the finance committee, was acted upon by the board, and payment of the warrants was refused. Subsequently the position of the County Attorney was sustained by the Appellate Court, in the case of the County v. H. E. Lowe, and the Court held in that case that the warrants involved were illegal; the amount being some $60,000.

By taking this position, the board had at its disposal the whole of the tax levy intended for 1887, and was able to pay current expenses, while it cast about for the ways and means to take up the million and more of outstanding floating indebtedness.

Heretofore the County has always anticipated the collection of the taxes, i. e. issued warrants after it was ordered and before any money was collected. Under this practice, after the levy was ordered at the September meeting, warrants were issued which could not be paid for several months. The books do not go to collection until about January 1, and the town collectors do not settle with the County Treasurer much before April, so that warrants must be held all these months.

By the construction of the new act relating to this County, given in a series of opinions by the County Attorney and acted

upon by the Board, all this is changed. The result is that now at the end of each fiscal year a large sum lapses into the general fund to be used during that period between the appropriations and tax levy, and it may be now said for the first time that the County is doing business on a cash basis.

So frequently was Mr. Bliss called upon during those exciting times, that his written opinions given at the request of the Board or its committees, upon the various questions that arose, would fill a volume. Among other opinions was one which resulted in defeating the gigantic scheme of Riley & Co., for the "Assessment of omitted Property;" a scheme which would have given the County but little if any net revenue, but would have cost the tax-payers a large amount, much of which would have gone into private pockets. It was characterized by the newspapers as the "Tax Ferret Scheme."

Mr. Bliss drafted a new law regulating the fees of the Probate Court; under the operation of which that Court is now more than self sustaining. He defeated claims of over a quarter of a million dollars brought against the County for building the present court-house. He has had, during the last year alone, over two hundred law suits, growing out of the complicated financial condition of the County affairs.

He is an earnest Republican, and takes an active part in political affairs.

A few weeks since Mr. Bliss submitted an opinion to the Public Service Committee, deciding that the County Board has no authority to appropriate money to assist the incorporated towns in Cook County to build roads and bridges, as has always been the custom in the past. Should this opinion be sustained, it will result in another saving to the County.

The character of mind possessed by the County Attorney, is one which peculiarly fits him for his position. On all ordinary questions, he quickly comes to a conclusion, which he is ready at once to announce, and will maintain until convinced of its incorrectness. In questions of more difficulty, he takes time for investigation, but in either case he evades nothing, and shrinks from no responsibility. His works furnish the best testimony of his legal ability.

ISAAC E. ADAMS

Is a fair specimen of the well appointed, aggressive young lawyer of the West. Few attorneys have obtained so fine a position at so early an age.

He was born at Mendham, New Jersey, October 29, 1857. He graduated from the North Western University, in the class of 1879, having taken a full classical course. He was admitted to the bar by the Supreme Court at Springfield, in February, 1882, and immediately commenced practice.

He married the daughter of Frederick B. Tappan, President of the Gallatin National Bank, of New York, a bank which was founded by Albert Gallatin, more than a hundred years ago, and which has never had but two presidents. Mr. Adam's practice soon began to run in the line of corporations and estates, and continuing to grow in that direction, he renounced all other practice, and now confines himself to those specialties. He is himself a director in more than twenty corporations. The tendency to special practice is becoming more and more pronounced, and should, we think, be encouraged. It is becoming constantly more difficult for a single mind to grasp and master all the questions that arise in a general practice, so as to become eminent in them all. Time was when the village school-master was the lawyer, and even the doctor; but the same reasons which caused these professions to become differentiated, now requires the process to be continued in each profession.

Mr. Adams has in the midst of his large business, found time for literary pursuits. He has written the life of Emery A. Storrs, published by Hubbard Bros., of Philadelphia, a book which is now in the sixth edition, and Belford, Clark & Co. of this City, are about publishing another work from the pen of Mr. Adams—a 12 mo. volume, entitled "Political Oratory." He has also contributed occasionally to the literary magazines of the day.

Last year Mr. Adams formed a partnership with W. A. Hamilton, and the firm has now an extensive practice in the law of estates and corporations, keeping some half dozen clerks constantly employed.

Mr. Adams is a member of all the most prominent clubs of the City. Of polished and gentlemanly manners, quick, active and decisive, he is ever on the alert, prompt in the dispatch of business, with eye, mind and heart open to every thing that is going on around him.

Office, 90 Lasalle St.

JOHN P. AHRENS.

The subject of this sketch was born in Germany, in 1851. His ancestry was of good German stock.

His parents, Edward A. and Elizabeth Paulsen Ahrens, came to this country when John P. was but four years of age, and settled in Davenport, Iowa, where they now reside. John P. was well educated in the public schools of Davenport, and read law with Hon. J. B. Leake, late United States District Attorney for the Northern District of Illinois.

In May, 1872, John P. Ahrens came to Chicago, and was soon appointed Deputy Clerk of the Superior Court, which position he held for several years. His clear head and accommodating manner won for him in that position the highest praise from all who had business to transact in that important office. While holding this position, he continued his law studies with great zeal, and was admitted to the bar in Chicago in 1873.

In 1875, he was appointed attorney for the International Bank of this City, and had his office in the bank.

The bank was doing a large business, and had an immense amount of real estate litigation, which soon brought Mr. Ahrens into the front rank as a clear headed and able lawyer. He continued in that position until Oct. 1, 1879, when he formed a law partnership with Hon. Lewis H. Bisbee, with whom he has remained ever since. The firm is now Bisbee, Ahrens &

Decker, Hon. Henry Decker, now a member of the Illinois Legislature, being the junior partner. The firm is located in elegant and expensive offices in the Home Insurance Building.

This firm has done a large business ever since the partnership was formed, and Mr. Ahrens has become widely known and universally respected.

He married Miss Fannie Hamblin in October, 1877, and they have four children. He has built for himself a fine residence at 3218 Vernon Avenue, and his home is a model in design, and in the tender affection which exists in the household.

Mr. Ahrens is a gentleman of fine instincts, evenly balanced temperament, and is an untiring worker in his chosen profession. He loves his calling and has become one of our best lawyers. He is careful and painstaking in all his work, and a safe man to conduct litigation.

Few lawyers have risen more rapidly than he, and he is building up a reputation for fidelity, honesty and ability, which will place him among the foremost of the members of the Chicago Bar at no distant day.

In 1885, he served as Grand Regent in the order of the Royal Arcanum, to which order he is greatly attached. He is a republican in politics, but never neglects his business for political contests, nor seeks office of any kind. He is a good specimen of that fine German stock, which Americanized, makes excellent citizens, kind fathers, loyal subjects, and bright professional men.

FRANK A. HELMER

Was born near Cuba, New York, April 8, 1854. His maternal grandfather was Christopher Keller, who was the first settler on "Keller Hill," near Cuba, and who died at the age of 92 years, his wife following him three weeks later, at the age of 88.

His parents came west in 1856, settling on a farm near De Kalb, in this State. He attended district school till ten

years of age, when his parents moved into De Kalb, then but a village. Here he attended the village school until fifteen years of age. During the two succeeding winters he taught a district school.

In the fall of 1872, when 18 years of age, he came to Chicago, and entered the preparatory course of Chicago University. He went through the preparatory course in four terms, and entered the freshman year of the classical course in the fall of 1874. He was an active spirit in college life, and politics, was one of the first of the class taken into the secret societies, and was a promoter and participator in every literary movement connected with the University.

He was elected publisher of the college paper during the last preparatory and freshman year, and was one of the editors during the junior and senior years.

He was the college orator representing the University at the Inter-Collegiate Oratorical contest in the fall of 1877, wherein nine of the colleges of the State competed.

He may be said to have shown a fair degree of business ability, as his collegiate education was obtained entirely at his own expense. This was accomplished by means of some commercial enterprises undertaken and carried on during the course. These proved uniformly successful, and enabled him to complete his course without indebtedness, graduating in the class of 1878.

A year's intermission was devoted to travel throughout the leading cities of New England and the Eastern States in the interest of a commercial house of Chicago. He then took a full course in the Union College of Law, graduating in the class of 1881, at which time also the degree of A. M. was received from the University.

In December, 1881, he entered the office of Frank J. Smith, as an assistant, and with the privilege of carrying on his own personal practice independently. At the end of a year he became a partner with Mr. Smith. This connection has since continued under the firm name of Frank J. Smith & Helmer. The business has largely increased since the formation of the firm.

In December, 1885, he was married to Miss Bessie Bradwell, daughter of Judge James B. and Myra Bradwell—a young lady of unusual scholastic attainments. She is a graduate of the Chicago High School, the Northwestern University at Evanston, and of the Union College of Law. Mrs. Helmer does not essay the practice of law, but has done much literary work on sundry legal publications, and takes an active and appreciative interest in her husband's professional career.

The work of the firm has been a general practice, exclusive of criminal law, with commercial law predominating, and latterly a large chancery practice and private corporation litigation.

They are the attorneys for three banks of the City (Commercial National, Atlas National and Chicago Trust and Savings,) and have a large clientage among the lumber firms and interests of the City.

Mr. Helmer's politics are straight Republican. He is conservative in disposition and temperament, cautious in determining upon litigation, tenacious when once in, and exhibits skill and diplomacy in the settlement of complicated matters. He has no enemies among the bar, but stands in good repute among them all.

Office of Frank J. Smith & Helmer, 152 Dearborn Street.

With a good intellectual and educational basis, of steady and studious habits, and having already a fine start in professional business, Mr. Helmer has every reason to look forward to the attainment of a very high place among the bar of this City.

CLAYTON E. CRAFTS.

The subject of this sketch, Clayton E. Crafts, was born at Auburn, Geauga County, Ohio, on the 8th day of July, 1848. His parents, who were well to do farmers, were natives of that State. The earlier years of Mr. Crafts' life were spent in the manner of most western lads, in the summer months working on his father's farm, in the winter attending the village school. The primary and intermediate grades successfully passed, Mr. Crafts was regularly enrolled at what was then called "The Hiram Institute," now more widely known as "The Hiram College of Ohio," in which institution he gained a creditable standing, at the age of eighteen.

He then entered the Ohio State and Union College of Law, whence he graduated with highest class honors in 1868, and at the age of twenty was formally admitted to the practice of law in all the courts of Ohio, and also in the U. S. District and Circuit Courts. He did not, however, remain long in his native State, but soon removed to the town of Watkins, Schuyler Co., New York. Here he entered the law office of John J. Van Allen, a man of much learning and extensive practice, and one of no little prominence as a politician and a leader of the Democratic party.

So successfully did Mr. Crafts fulfill the duties of his position, that at the end of a year, it was the earnest desire of Mr. Van Allen that he enter the firm as junior partner; but, feeling that the profession was over crowded and being of an energetic, self-reliant disposition, Mr. Crafts decided to cast his lot in some new and enterprising western city. He accordingly removed to Chicago, in the fall of 1869, shortly after his marriage with Miss Cordelia E. Kent, daughter of Oscar Kent, a wealthy farmer residing in Aurora, Ohio.

Upon arriving in this city, Mr. Crafts formed a partnership with Henry Lincoln, Esq., which business relation continued until 1873, when it was dissolved by mutual consent. Mr.

Crafts' progress at the bar was rapid. He early took rank among the safe lawyers of the city, and this reputation he has ever since retained. In 1885, he formed a partnership with George M. Stevens, present Master in Chancery, and this firm still continues under the style of Crafts and Stevens.

Their office is at 162 Washington St.

In the practice of law Mr. Crafts has devoted his attention to office work and more especially to the law of real estate, and has had marked success in matters requiring business tact and nicety of judgment. Although devoted to this class of practice, both from choice and adaptability, Mr. Crafts has, by no means, led an inactive life. In the domain of politics, he has ever been a most energetic worker.

As early as 1873, at a time when the affairs of the Town of Cicero were thought to be in bad hands, and the citizens demanded a change of administration, Mr. Crafts headed the "Reform Ticket" as a candidate for supervisor and *ex officio* treasurer and member of the Board of Trustees, (the town being then under special charter), to which office he was elected and re-elected the following year. Later he was appointed attorney for the Board of School Trustees which has control of an unusually large school fund. This office Mr. Crafts still holds.

In 1878, he was elected by the State Convention a member of the Democratic State Central Committee, and in the fall of that year received the nomination for State Representative, but was defeated by a small plurality by Hon. B. F. Weber, democrat, Mr. Crafts' being a minority district. He was again a candidate in 1882 and was successful, being elected to the 33d General Assembly. He was re-elected to the 34th General Assembly in 1884, and to the 35th in 1886.

From his entry into the Legislature Mr. Crafts bore a conspicuous part in the workings of that body. Being a leader of the minority in the Lower House, he has been an active worker in committee, and much of the non-political legislation passed at the sessions of which he was a member, bears the impress of his unerring judgment and devotion to the interests of the whole State.

At the session of 1884, he was chosen chairman of the democratic House caucus of the 34th General Assembly. During this entire session Mr. Crafts was frequently called by the speaker to the chair. An incident is told by many members of that session, of how a difficult and purely technical question of parliamentary law was suddenly raised by Mr. Fuller, leader of the opposition party, for the purpose of flustering Mr. Crafts upon his first sitting, and the way in which Mr. Crafts immediately, and without embarrassment, disposed of the question to the entire satisfaction of the whole assembly. It is said that upon no subsequent occasion did any member of either party try to entangle him by questions of this nature.

During his three sessions Mr. Crafts served at different times on the Judiciary committee, on the committee of Municipal Corporations, the Committee on Elections, on Revenue, and on Railway Corporations.

Among the bills which he introduced and which became laws, were, the bill for voluntary submission of matters in controversy to a judge by written agreement; also the bill giving six additional judges to the Circuit Court of Cook County; the bill making Chicago a drainage district: and the bill to enable school trustees to lay out streets.

He actively worked for the Jury Commission bill, also the bill for the payment of Special Assessments in installments.

At the 35th General Assembly he was the caucus nominee for speaker, having gained an unqualified victory over McKindley, his opponent. This made him the leader of his party in the House for that session, and it was then, as well as at previous sessions, that Mr. Crafts gained his reputation for being the hardest worker in the House.

For acumen in parliamentary law and readiness in debate, Mr. Crafts had few equals in either branch of the State Legislature. As a speaker he is plain, forcible, and to the point. His logic is keen and incisive, and few men in public life have a more direct and practical influence upon their hearers.

SUFFRAGE IN WASHINGTON TERRITORY.

LETTER FROM MR. BUSH.

Our readers are familiar with the history of the suffrage in Washington Territory. They know that the Territorial Legislature recognized the right of suffrage in the women of the Territory—that the act was held unconstitutional by the Supreme Court of the Territory on account of a defect in the title of the law—that the Legislature again passed the law with a good title, and now the Territorial Supreme Court has again declared it unconstitutional; this time as conflicting with the Organic Act.

The following letter from Mr. Bush, a lawyer of Seattle, will explain itself:

Seattle, Wash. Ter., Aug. 17, 1888.

Editor Law Times:

I send you herewith a copy of the opinion in the case of Bloomer v. Todd, et al. Sifting the opinion down, it simply holds that the word "citizen" in the Organic Act was used as a qualification for voting and holding office, and that "in our judgment the word then meant, and still signifies, male citizenship, and must be so construed." The court ignored the fact that the Revised Statutes are the measure of the power of territorial legislatures to-day instead of the original organic acts, but in construing section 5 of the original Organic Act, the court errs. It construes the first clause of the section as declaring every white male inhabitant above the age of 21 years, who shall have been a resident at the time of the passage of the act, entitled to vote at the

first election, when in fact the same section provides that they "shall possess the qualifications hereinafter prescribed." Those qualifications are included in the proviso: "That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of 21 years, and those above that age who have declared on oath their intention to become such." As the words "white male inhabitant" designated one qualification for voting, so the proviso describes another class to which such male inhabitants belong, namely: citizens, or those who had declared their intention to become citizens. This class included in the Organic Act women as well as men. Recognizing the right of the territorial legislature to adopt a liberal form of government, the same section provided that after the first election the legislature might prescribe the qualifications of voters and of officers, and the only limitation was that they should belong to the class of citizens or of persons who had declared their intention to become citizens. There was no limitation of sex in this description. There was no hidden intent to limit the power of the legislature in granting the right of suffrage, to males alone. Again, the court say, that the word "citizens" was then well understood as applicable only to male citizens over 21 years of age when used as relating to the granting of the privilege of the elective franchise. This is an assumption not borne out by the facts, as it was claimed that the State legislatures could extend or limit the elective franchise as they pleased without regard to citizenship, and that the right to vote was not a right incident to citizenship. The court then refer to Sec. 14 of the Organic Act, which provides for the election of a delegate and requires that he shall be a citizen of the United States. The word there is used generically. He was required to have one of the qualifications of a voter.

They also cite that the act provides for the election of certain officers and deny that Congress contemplated at that time that these offices might be filled by women. Congress in us ing the words "citizen of the United States" as a qualification for holding office, did not limit the power of the territorial legislatures to male citizens. Women have served as justices

of the peace in the Territory of Wyoming and no question has has ever been raised there against their right to hold such office.

The court also cite the Constitution of the United States, to show that the word "citizens" meant male citizens. They admit that masculine pronouns are used with reference to representatives, senators and the president, but they contend that when one of the qualifications was to be a citizen of the United States, that it should be read "male citizens" of the United States. As the Constitution provided that members of the lower house should be elected by the people of the several States who had the qualifications requisite for electors of the most numerous branch of the State legislature, citizenship of the United States did not constitute a qualification for voting, unless made so by the State laws; and in regard to representatives, they were required to have been seven years a citizen of the United States—senators, nine years a citizen of the United States—the president, a natural born citizen, or a citizen of the United States at the time of the adoption of the Constitution. Here was a distinct class of persons then known as citizens of the United States as distinguished from subjects of foreign countries. No word indicating sex was used, nor was it necessary to use the words "male citizens."

This may not reach you in time for the October number, but I send it so that you can make such comment as you may see fit. Yours very truly.

W. S. Bush.

P. S. Sec. 5596 R. S. U. S. repeals all laws which have been in part carried into the Revised Statutes. This repeals the Organic Act of 1853. Section 5 of that act, used the words "male inhabitants" in defining the qualifications of electors at the first election. Section 1859 R. S. U. S. used the words "every male citizen." Section 5 of the Act of 1853, is entirely repealed, and the only section of the Revised Statutes which defines the legislative power over suffrage, is section 1860, which applies to all Territories and confers upon the legislatures of all the Territories, the power to grant suffrage to men and women upon equal terms.

W. S. B.

There is little to be added to the clear statement of our correspondent.

Secs. 5595 and 5596 Rev. St. of the U. S., provide as follows:

"Sec. 5595. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy three, as revised," &c.

"Sec. 5596. All acts of Congress passed prior to said first day of December (1873), any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general or permanent in their nature."

The effect of these sections is to repeal the provision of the Organic Act of Washington Territory, previously in force relating to the suffrage; since that provision "is embraced" in a "section of said revision."

That section is 1860, which reads as follows:

"Sec. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

"First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

"Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

"Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is, and has been for the period of six months, his permanent domicile.

"Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any Territory."

This is the law and the only law of the United States now in force relating to or having a bearing upon the legislative power over the suffrage in the Territories. And it applies as well to Washington Territory as to the others, the words of the first clause being "as at all elections in Territories already organized."

In order to determine whether this section authorizes the Legislature to recognize the right of the women of the Territory to the elective franchise, it is not necessary to go into any nice disquisition over the meaning of the word "citizens," since there is sufficient in the section taken in connection with the preceding one to determine the intent of Congress upon the subject.

Sec. 1859, immediately preceding, reads as follows:

"Sec. 1859. Every male citizen above the age of twenty-one, including persons who have declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section."

Here it will be seen that the word "male" is used in sec. 1859, as a qualification for an elector at the first election in any Territory thereafter to be organized; while Sec. 1860 provides that at all subsequent elections (those after the first), in any territory thereafter to be organized, *as well as at all elections in Territories already organized*, the qualifications of voters should be such as might be prescribed by the legislative assembly of the Territory, subject, nevertheless, to certain restrictions, of which sex is not specified as one.

Is not the use of the word "male" in sec. 1859, and the omission of it in sec. 1860, conclusive evidence that Congress intended that the Territorial Legislature could concede the

franchise to the women of the Territory, should it choose to do so?

It having been provided in Section 1859, Rev. St., that male citizens having the qualifications specified should be entitled to vote at the first election in Territories thereafter to be organized, if it had been the intention to restrict the power of the Legislatures, at subsequent elections, so that they could only make male persons qualified to vote, the word "male" would have been carried into the next section.

Instead of that, the Legislatures are to have full power over the subject, except that the voters must be "citizens of the United States," or those who have declared their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

We think it morally impossible that the decision of the Supreme Court of the Territory can be sustained by the Supreme Court of the United States. It is not only in the teeth of the Revised Statutes of the United States, but it is in direct contravention of the democratic doctrine of "popular sovereignty," so ably advocated by the famous Stephen A. Douglas; the right of the people of a Territory to regulate their own concerns, according to their own best judgment.

STATUTE MAKING IN ILLINOIS.

There is a common saying among those familiar with statute making, that the more one knows about how statutes are made, the less he thinks of them;—it should be the less he thinks of the statute makers. There is no more delicate function of government than making statute law, and it is fair to say none is so carelessly performed or performed by persons so illy prepared for the work. Many expedients have been resorted to to secure greater accuracy and harmony in the enactments of the legislature, such as Boards of Revision, etc., but with little beneficial effect. It was thought a great corrective was found in the constitutional clause "no law shall be revived or amended by reference to its title only, but the law revived or section amended shall be inserted at length in the new act;" and it must be admitted that it has brought about a considerable reform in the making of a numerous class of amendments, but it leaves a more troublesome class unrestricted—amendments by implication. It is no doubt a wise construction of this clause which confines its operation to such acts as assume in terms to alter or amend a given section; for, as is said by our Supreme Court in The People v. Wright, 70 Ill., 388, "It cannot be held that this clause of the Constitution embraces every enactment which in any degree, however remotely it may be, effects the prior law on a given subject, for to so hold would be to bring about an evil far greater than the one sought to be obviated by the clause."

There are, however, some examples in the enactments of our legislature that go far to show that this construction opens

a wide door to evasion of the true spirit of the clause. It nearly breaks down its restraining force and throws us back upon a very slender reliance—the conscience and care of the legislator. A single instance (and I might cite many) will suffice to illustrate this point. The act of March 26, 1872, with reference to changing the name, place of business, increasing or decreasing the number of directors of corporations, etc., allows these changes to be made on a vote of two thirds of all the stock of the corporation at a meeting called by the directors. Some difficulty sprang up in a corporation that happened to have an even number of directors, upon which the directors were evenly divided. One of the parties controlled a majority of the stock but not two thirds. This party conceived the idea that if they could add one or more to the number of directors, they might elect the new members and thus secure control of the board, but as the statute stood they could not come within its terms; so it was desirable that the statute should be amended. The desired amendment could have been made by the insertion of the words "or a majority of the stockholders" in one section, and the change of the word "two thirds" to "majority" in two other sections. The straightforward way and the one the constitution makers no doubt intended and public policy demanded, was to have proceeded directly to the amendment of those sections in this way, that is, by a bill professedly for that purpose and in which the sections amended would have been "inserted at length in the new act." This course would have drawn upon the bill for that purpose the attention of the public that is supposed to be interested in every change proposed to be made in a general law, as well as that of the particular individuals whose rights were intended to be affected. The course taken was to get an independent act passed; one that although its only purpose was to effect these changes in the existing law, made no reference to it whatever either in its title or in its text.

The respect for the spirit of the Constitution ought to be so high among legislators that the passage of an act not within its teachings would be an impossibility. Such acts as the one referred to overload and confuse the statutes, and tend

to the evils of special and personal legislation.

To show the carelessness, not to say recklessness, of our legislators, I will give a few instances which come to my mind.

The Constitution of 1870, provides that after the November election in 1873, the county business in counties not under township organization, shall be done by a board of three commissioners. Until that time the county court was to continue to do this business. The road law applicable to those counties being revised before that time, it retained the "county court" in the body of the act as the agency for doing county business, but the revised act provided that after the election of commissioners in November, 1873, the duties therein required to be discharged by county courts, should devolve upon the board of county commissioners. The revision being published in 1884 after the election of the commissioners, the revisor put the words "*county court*" in italics and inserted after them in brackets the words "county board," indicating, as explained in a foot note, that "county court" was to be omitted and "county board" read instead. So also whenever the words "clerk of the county court" occurred, they were put in italics and "county clerk" inserted in brackets. In 1875, the legislature amended several of the sections in which this had been done, and instead of dropping the words "county court" and "clerk of the county court" and retaining the words "county board" and "county clerk," both sets of words were retained and of course enacted into law.

The revision of the road law of 1871, having legislated the overseers of highways out of office, they rallied at the next election of members of the legislature, and in 1873 the legislature passed a new revision putting the overseers in again. In this revision, section 68 required the damage to owners of land injured by opening ditches, drains, sluices or water courses, to be "levied and collected in the same manner as provided in Section 14, Art. 17 of the township organization law." At the time this act was passed there was nothing on the subject of levying and collecting such damages in the "township organization law," nor was there any article 17 in that law. It contained but 15 articles. Although a note to this section

68 in the Revised Statutes of 1874, called attention to these facts, the error was repeated in 1877 when the road law was again revised by the legislature. A history of the revisions and amendments of the road law in the last fifteen years, would be curious reading. The bone of contention has been the overseers of highways, whether there should be such officers or not.

The General Assembly of 1877 passed two emergency acts. They were both approved on the same day and of course both went into effect on the same day. In one of these acts it was provided that the "State Board of Agriculture should on or before the first day of November, 1876, and biennially thereafter, make and deliver to the governor a report of their actings," etc., "*and no other annual or biennial report shall be made by such officers*;" the other act provided that the State Board of Agriculture should immediately after their annual meeting in January in each year, make and deliver to the governor a report of their doings, etc., and "no other annual report shall be made by such Board." In the first of the acts referred to, the "State Board of Agriculture" was grouped with certain State officers and in the other it alone was mentioned.

In 1875, Section 1 of the drainage act was amended so as to require that the petition for a drain or levee should be filed with "*the clerk of the town board of auditors.*" (The section before its amendment required the petition to be filed with the county clerk.) There was at the time of this amendment, no such officer as "the clerk of the town board of auditors." As the filing of such a petition was jurisdictional and lay at the foundation of all the proceedings, this blunder rendered the drainage law useless, until a subsequent legislature corrected it.

Sec. 25 of the Practice act as it originally stood, provided that no amendment should be cause of continuance unless the party affected thereby should make affidavit that in consequence thereof he was unprepared to proceed to or with the trial of the cause at that term. The legislature of 1875 amended it by adding "stating in such affidavit what particular fact or facts the party expects to prove by such evidence,"

etc. These added words presuppose that the cause for asking delay is that the party wishes to obtain evidence of certain facts; but the context says nothing whatever about proving any facts or obtaining evidence for the purpose. The words "such evidence" have no predicate in the section or in the act. If it were a mere matter of grammar this error would be of little consequence, but the amendment throws the whole section into doubt. Before the change, the court might have given a continuance for any sufficient reason shown in the affidavit, but since, it is not clear whether the absence of evidence is the only ground upon which a continuance can be granted, or whether if the cause is something else than the absence of evidence, the section is to be construed as before the amendment.

The history of these amendments is substantially this: some case arises either in court or out of court, in which it is believed it would have been better if the law had been otherwise than it is found to be, so an amendment is drawn and introduced into the legislature to cover that particular point. Usually it is by adding a proviso to some existing section. No examination is made of other parts of the statutes to see how they stand related to the section proposed to be amended, how many repeals by implication will be effected. In most cases, as in the instance last cited, not even the section itself is critically examined. It may be that it has been modified or repealed by some later act, if so, to recite it in the amendatory act, will be to give it new life and thereby to repeal by implication the act by which it was repealed or modified by implication. This will be the effect even though the object of the amendment is only to add some new matter. Being re-enacted, it is supposed to be the last expression of the legislature, and repeals everything that is inconsistent with it. Several such cases have occurred. One by an amendment made by the last legislature.

The result of this inconsiderate, careless way of legislating, is to fill the statutes with illy digested and contradictory enactments; to increase litigation and bring contempt upon all law. It is not enough that the legislator be satisfied of the fairness

of a proposed law. He should consider whether it is in harmony with existing laws; what enactments, if any, it will modify or repeal, and how; and if it is desirable on the whole to make the proposed change, it is his duty to see that it is made in such manner that it can be easily and clearly understood. The fewer amendments by implication the better.

It is not the purpose of this article to give a list of the mistakes that have been made since the revision of 1874. This would be a tedious job. Many of the worst cannot be made plain without extensive quotations, and others can only be appreciated in their application to actual cases.

The practice of relying upon the general repealing clause "All acts and parts of acts in conflict with this act are hereby repealed," instead of specifically repealing the acts and parts of acts that are in conflict and thus getting them out of the way, is an exceedingly bad practice. It tends to carelessness on the part of the legislature and confusion in the laws. The legislature seems to think this clause will ransack the entire body of the statutes, search out, repeal and expunge by its own vigor, all conflicting statutes. On the contrary the conflicting statutes still remain and must be reprinted with the live ones the same as if they remained unrepealed. The clause but expresses a rule of the common law that is so well understood, it does not need to be repeated. The last expression of the legislature repeals whatever is in conflict with it as well without these words as with them. It is the duty of the legislature to know what acts and parts of acts are in conflict, and repeal them in distinct terms. The best revision of statutes is one that commences and proceeds with the successive amendments. It was thought this would be the effect of the clause in the constitution requiring the section amended to be "inserted at length in the new act." Unfortunately this clause is itself the occasion of mistakes and confusion, unless care is taken to harmonize the new act with others which it may repeal or amend by implication.

H. B. Hurd.

THE THEORIES OF HENRY GEORGE.

In the North American Review for July, is an article by G. T. Ferris, entitled "Practice v. Theory in re 'Henry Georgeism,'" which is worthy of special attention. Mr. Ferris refers to Mr. George Kennan's "Siberian" article in the Century, as having a bearing upon the new land theory. Mr. Ferris says:

"Mr. George regards government possession of land as the specific cure for social and industrial evils. He proposes to accomplish this by taxing land to the full rental value as the most convenient method of attaining the ideal. The end, however, is the extinction of private ownership, as all nominal title to land would in the end be destroyed after the substance of its value had ceased to exist."

He then reverts to Mr. Kennan's observations of the land system in Western Siberia;—to the splendid climate of that country—its plains of great fertility—its grand water ways, and the favorable conditions generally for agriculture and for the prosperity of the tillers of the soil. Most of the peasants and farmers are either voluntary settlers or the descendants of convicts who have regained civil rights. Mr. Ferris continues:

"In this magnificent region there is a complete absence of fences, farm-houses, or any buildings outside of the villages. Cattle are inclosed in the common village pasture instead of in fenced fields outside. The Siberian peasant will not build a farm-house because he does not own the land.

"'With few exceptions' says Mr. Kennan, 'the land belongs to the crown. The village communes enjoy the usufruct of it, but they have no legal title, and cannot dispose of it nor reduce any part of it to individual ownership. All they have the power to do is to divide it up among their members by periodical allotments, and to give to each head of a family a sort of tenancy at will. Every time there is a new allotment the several tracts of arable land held by the crown may change tenants. So that if an individual should build a house or a barn upon the tract of which he was the temporary occupant, he might, and probably would be forced, sooner or later, to abandon it. The result of this system of land tenure, and this organization of society, is to segregate the whole population in villages, and to leave all the intervening land unsettled.'

"Even the villages are shabby and cheerless, and signs of enterprise, comfort and taste are conspicuous by their absence. Such is the picture drawn by Mr. Kennan. Subtracting from the sum total the operation of the other agencies involved in Russian maladministration, enough is left to illustrate the results of the government ownership of land, and the death of individual right in real property."

WHO WERE VOTERS IN THE EARLY HISTORY OF THIS COUNTRY?

By the term "voters" will be understood those who, under the Charters, Constitutions and laws of the colonies, provinces and States, had in early times, the right of suffrage. Whether, as in New York and New Jersey, the class whose rights will principally be under discussion, actually voted, or whether, as in most other cases, they for any reason refrained from voting or from attempting to vote, is a matter which will be left entirely out of view, as not affecting the question from a legal stand-point. Political rights are not lost by non-user. In some parts of the South the colored people do not vote at all; yet no one doubts their legal right.

Understanding the term in this sense, let us see who were voters in the early history of this country. We will first take the original 13 States, which are the ones principally to be considered:

MASSACHUSETTS.

By one of the very first laws of the Colony of New Plymouth, passed in 1632, only twelve years after the landing of the Pilgrims, "it was enacted by public consent of the freemen of this society of New Plymouth," etc.—(Plymouth Colony Laws, by Brigham, p. 30.)

By an act or resolution adopted at New Plymouth, Nov. 15, 1636, referring to the choosing of a Governor and seven Assistants, it was provided as follows:

"This election to be made only by the freemen according to the former custome," etc.—(Ibid. p. 37.)

But afterward it was enacted as follows:

"And such as are not freemen but have taken the oath of fidelitie and are masters of families and inhabitants of the said towns, as they are to bear their part in the charges of their committees, so to have a vote in the choyce of them."—(Ibid. p. 63.)

Who was an "inhabitant?" Let the law itself answer.

"Every person that liveth and is quietly settled in any township, and not excepted against within the compasse of three months after his comeing, in this case shall be reputed an inhabitant of that place."—(Brigham's Colony Laws, p. 73.)

Were women "inhabitants?" Unless it be denied that a woman was a "person," it must be admitted that by being quietly settled in a township and not excepted against within three months, she became an inhabitant, and if an inhabitant and head of a family, she had a vote, whether she was a freeholder or not.

The recital of one law is as follows:

"Whereas, the number of freemen in many places is but small, and the inhabitants of the townships many more, who have equale votes with the freemen in the choice of deputies," etc.—(Ibid. p. 112.)

By the Charter of third William and Mary, there was to be a Great and General Court or Assembly to consist of the Governor and Council or Assistants, and of such freeholders "as shall be from time to time elected or deputed by the major part of the freeholders and other inhabitants of the respective towns or places who shall be present at such elections." No freeholder or other person could have a vote who did not have a freehold to the value of forty shillings per annum, or other estate to the value of fifty pounds sterling.—(Charter and Laws, 1726, p. 7.)

The Explanatory Charter of King George recited the foregoing without change, and the Election Law of 1742 corresponded with that provision.

For many years, the form of the precept for calling the Great and General Court or Assembly, ran thus:

"These are * * to cause the freeholders and other inhabitants of your town [possessed of a freehold of 40 s. per annum, or other estate worth £50], to assemble," etc.—(Laws of 1759, p. 78.)

In the Constitution of 1780, the word "male" was inserted, and thus became, and has since remained, one of the qualifica-

tions to entitle an elector to the benefit of the guaranty of the Constitution. If women had not previously an equal right to the suffrage, why was it necessary to insert the word "male" in the Constitution of 1780?

RHODE ISLAND.

The Original Charter of 15th Charles II, provided that the Governor and other officers should be chosen "out of the freemen of the said Company."—(Laws of R. I., 1798, p. 7.)

That the Assistants should be "thereunto elected or deputed by the major part of the freemen," etc.—(Ibid. p. 8.)

The election law, enacted in 1663, and re-enacted at various times, up to 1798, provided as follows:

"That no person whosoever shall be permitted to vote or act as a freeman in any town meeting in the State, but such only who are inhabitants therein and who" [are possessed of a freehold worth $134, or renting for $7 per annum.]—(Ibid. p. 115.)

This law was re-enacted in 1808, 1811, 1814 and 1822.—(Laws of 1822, p. 90.)

Town officers to be elected by the freemen.—(Ibid. p. 258.)

In 1840, the word "male" was first introduced into the law regulating the manner of admitting freemen.—(Pub. Laws after 1822, p. 2018.)

In 1842 the Constitution was adopted, in which the word "male" was inserted as a qualification.

Previous to the Constitution of 1842, the voters had been the inhabitants who were freeholders.

CONNECTICUT.

Connecticut, as is well known, was originally a colony of Massachusetts. In 1639, all "the free planters" formed a Constitution of Civil Government. It was provided

"That church members only shall be free burgesses, and that they only shall chuse magistrates," etc.— Code of 1650, p. 118.

According to the Charter of 1662, the members of the General Meeting or Assembly were to be "elected or deputed by the major part of the freemen of the respective towns," etc.—(Rev. Laws, 1796, p. 2.)

By the Election Law of 1697, it was enacted "that every

freeman in each town there present, shall give his vote or suffrage" etc.—(Ibid. p. 151.)

The Election Law in the compilation of 1808, is substantially the same.

The voters were the freemen. The freemen were those who had freehold estate of the value of $7 per annum, or $134 of personal estate, who were "persons of a quiet and peaceable behavior," etc., and who had been admitted and made free of the State. They were the "free inhabitants."

Neither in the acts prescribing the qualification of voters nor in the freeman's oath was there any distinction of sex. The freeman's oath was established in 1640. The form of it will be found in the Laws of 1796, p. 328.

In 1818, Connecticut adopted a Constitution, the second section of which contained the word "male." But it had reference to those who should become voters after the adoption of the Constitution. The first section provided that "all persons" admitted freemen previous to the ratification of the Constitution, should be electors. The word "male" was not in the first section; which was an implied admission that previous to 1818, sex had not been a qualification.

NEW HAMPSHIRE.

The temporary Constitution of 1776 contained no qualification for the suffrage. The common law rules and customs prevailed until the Constitutions of 1784 and 1792, which contained the word "male" as a qualification.

NEW YORK.

Originally, in New York, as in the other colonies, freehold suffrage prevailed. That women voted is a matter of history. Lady Deborah Moody, in 1654, voted for town officers and for taxes and officers of Gravesend, Long Island, and for years elected all the town officials by her single vote.—(Lady Deborah Moody, by James W. Gerard, 30. 1.)

The proclamation of Governor Dongan, in 1683, directed "all the freeholders" to vote. The Assembly so chosen enacted in the "Charter of Liberties" that "every freeholder within the Province" should vote for members of Assembly,

and that "by freeholder is understood every one who is so understood by the laws of England."

The Constitution of 1777, in Sec. 7, contained the word "male," making sex a qualification, for electors of Representatives. In the qualifications prescribed for electors of Senator, Governor and Lt. Governor, however, there was no distinction of sex.

Thus New York presents the earliest instance of the incorporation of the word "male" in the fundamental guaranty of the right of suffrage.

That the elective franchise, previous to the Constitution of 1777, was attached to the freehold, is manifest from the form of the oath which the elector must take when challenged:

"I do solemnly and sincerely swear * * that I am possessed of a freehold in my own right [or in the right of my wife, as the case may be], of the value," etc.—(See Laws of N. Y. 1802, vol. 1, p. 269, where the form of oath prescribed many years before, is still retained.)

Even after the voting was restricted to males the husband could vote for his wife's freehold; which shows that previously the common law rule prevailed. One branch of that rule was that *feme sole* freeholders could vote in their own right.

NEW JERSEY.

In the Declaration of the Lords Proprietors, made in 1672, it was provided that

"No person or freeman whatsoever shall be counted a freeholder of the said Province, nor have any vote * * until he doth actually hold his or their lands by patent from us the Lords Proprietors."—(The Grants etc. by Leaming & Spencer, p. 32.)

In the Fundamental Constitutions of 1683, it was provided in sec. 3, as follows:

"The persons qualified to be freemen, that are capable to choose and be chosen in the Great Council shall be every planter and inhabitant dwelling and residing within the Province, who" [has 50 acres of land, 10 of it cultivated, or if living in a borough, a house and 3 acres], etc.—(Ibid. p. 154.)

By the law of 1698 it was enacted:

"That all the freeholders inhabiting in every of the respective towns or divisions within this Province, shall annually meet on * * and choose freeholders" [for representatives.]—(Ibid. p. 368.)

The Proprietors' Memorial of 1701 provides that the General Assembly shall be chosen by the inhabitants, householders.—(Ibid. p. 601.)

Among the Proprietors for the Western Division was Elizabeth Miller.—(Ibid. p. 615.)

That the women were entitled to the suffrage—that they were expected to vote and did vote, is manifest from the Election Law passed as late as Feb. 22, 1797.

The 11th Section provided that all free inhabitants of the State, of full age, having the specified freehold and residence, should be entitled to vote; and the 9th section read as follows:

"Every voter shall openly, and in full view, deliver his OR HER ballot [which shall be a single written ticket, containing the names of the person or persons for whom he OR SHE votes], to the said judge or either of the inspectors, who, on receipt thereof shall, with an audible voice, pronounce the name of such voter," etc.—(Paterson's Laws of N. J. 1800, p. 230.)

History attests what this law sufficiently indicates, that the women voted extensively in New Jersey at that time.

The custom of voting without distinction of sex, was in accordance with the Constitution of 1776.

In 1807 a law was passed, reciting that great diversity of practice had obtained throughout the State in regard to the admission of females and others to vote in elections, and providing that thenceforth no person should vote except free white male citizens, etc. This was re-enacted in 1820. But these laws were unconstitutional.

The word "male" was inserted into the Constitution of New Jersey in 1844.

PENNSYLVANIA.

In the Duke of York's Laws of 1676, it was provided,

"That all votes in the private affairs of particular towns, shall be given and determined by the inhabitants, freeholders, householders."—(Linn's Collection, Harrisburg, 1879, p. 51.)

In the Charter to William Penn, of 1681, power was granted to make laws "by and with the advise, assent and approbation of the freemen of said country."—(Laws, 1700–1781, App. p. 2.)

In the laws of 1682, it was enacted that "every inhabitant in the said Province" having a specified freehold, "and every in-

habitant artificer or resident who pays scot and lot to the Government, shall be deemed and accounted a freeman of the said Province," and entitled to vote for representatives.—(Linn's Collection, p. 99.)

The first election in the Province was held, Nov. 18, 1682. The writs required "all freeholders to meet" and elect deputies and representatives.—(Ibid. p. 473. Hist. Notes.)

By the Charter of 1701, granted by Penn, the Assembly was to be chosen by the "freemen."

Chapter II, Sec. 6, of the Constitution of 1776:

"Every freeman [of requisite age and residence, being a tax payer], shall enjoy the right of an elector" [of representative.]

The Constitution of 1790 guarantied the right to vote to "every freeman" having the qualifications therein specified.

The Constitution as amended in 1837–38, did not make sex a qualification.

In 1874, the word "male" was placed in the Constitution. Previous to that, in Burnham v. Luning, (Legal Intelligencer, 1872, p. 5, Same Case, 9 Phil. [Pa.] 241), the Supreme Court of Pennsylvania had decided that the right of voting was confined to the male sex.

It is manifest that the men of that State were not satisfied with the soundness of the decision, and were fearful it would be overruled, else why did they insert the word "male" in the Constitution of 1874?

DELAWARE.

The Election Act of 1733, Sec. 1, provided that "the freemen and inhabitants" of the respective counties were to meet and choose Representatives.—(Laws of Del. 1700–1797, p. 147.)

In the Election Act of 1772, those voting are spoken of in every section simply as "persons."—(Ibid. p. 500.)

Art. IV, Sec. 1, of the Constitution of 1792:

"Every white free man of the age of twenty-one years, having resided," etc. "shall enjoy the right of an elector."

The word "male" was unconstitutionally inserted in the Election Law of 1811. The Constitutional guaranty was without distinction of sex until 1831, when the word "male" was put into the new Constitution.

MARYLAND.

In the Original Charter, power was given the Proprietor to make laws "with the advise, assent and approbation of the freemen of the same Province, or of the greater part of them, or of their delegates or deputies," etc.

The Election Law of 1716 required notice to be given "to all the freemen" of the county, having a specified freehold.—(Laws of Md. 1765.)

Sec. 2 of the Constitution of 1777, contained the following guaranty:

"All free men, twenty-one years of age, [having the prescribed freehold and residence], shall have a right of suffrage in the election of delegates," etc.

The Election Act required notice to be given "to all the free men" of said County. "Free men" and "freemen" were synonomous.

By the Amendment of 1801, the word "male" was inserted in the Constitution.

VIRGINIA.

By the Charter of 1609, the Treasurer and Company for Virginia were erected into a corporation and body politic. Two of the company were women—Katharine West and Millicent Ramsden.—(Stith's App. No. 2; Hening's Stat. at Large vol. 1, p. 84.)

The first General Assembly appointed by the proprietors, was convened in June, 1619.

The first elective General Assembly was provided for by an ordinance and Constitution of July 24, 1621, as follows:

Sec. IV. The Council of State and two burgesses from every town, etc. were "to be respectively chosen by the inhabitants."—(Hen. St. vol. 1, p. 112.)

By the Act of 1646, election was to be made by "the freemen."—(Ibid. p. 334.)

By the Act of 1654, "all housekeepers, whether freeholders, leaseholders or otherwise tenants, shall only be capable to elect burgesses." The word "housekeeper" to "extend no further than to one person in a family."—(Ibid. p. 412.)

Act of 1655–56:

"Whereas we conceive it something hard and unagreeable to reason that

any person shall pay equal taxes and yet have no votes in elections; Therefore * * that so much of the act for choosing burgesses be repealed as excludes freemen from votes," etc.—(Ibid. p. 403.)

After this there was a contest between the "freemen" on the one side, and the "freeholders" and "housekeepers" on the other, which continued until 1699, when the suffrage was restricted to freeholders; the freemen, not freeholders, being again excluded.

In this Act, certain classes of freeholders, including women, were expressly prohibited from voting. This is the earliest instance of the statutory exclusion of women from the suffrage, in this country, either expressly or by necessary implication.—(Hening's Statutes, vol. 2, p. 172.)

The Constitution of 1776 provided that the right of suffrage should remain as it was then exercised.

The voter in those days was required to take oath that he claimed an estate for life at least, "in his own right, or in right of his wife."—(Hening's Statutes, vol. 9, pp. 58, 257, 262.)

The word "male" appears in the State Constitutions of 1830 and 1851, and again in that of 1869.

SOUTH CAROLINA.

The First Charter, granted by Charles II, in 1663, empowered the Proprietors to enact laws "with the advise, assent and approbation of the freemen of the said Province, or the greater part of them, or their delegates or deputies," etc.—(Statutes of S. C., vol. 1, Constl. 1836, p. 24.)

In the Act of 1729, for establishing an agreement with some of the Lords Proprietors of Carolina, for the surrender of their title, etc., Mary Danson is named as one of the Proprietors.—(Ibid. p. 62.)

The Election Law of 1704 contained no sex qualification.—(Stat. S. C., vol. 2. p. 249.)

By the law of 1716, "every white man," otherwise qualified as therein specified, was qualified to vote for members of the Assembly.—(Ibid. p. 688.)

The language was similar in the Acts of 1719, 1721 and 1745.—(Stat. S. C., vol. 3, pp. 36, 657.)

By the Constitution of 1776, the qualifications of electors were to be the same as required by law, except a certain property qualification was therein prescribed.

Constitution of 1778: "Every free white man" etc., [prescribing freehold and other qualifications.]

Constitution of 1790: "Every free white man," etc.

In the Constitution of 1868 the word "male" was inserted, and again in the new Constitution of 1882.

NORTH CAROLINA.

By the Charter, the Proprietors were to make laws "by and with the advise, assent and approbation of the freemen of the said Province," [or of the county, etc.]

Constitution of 1776: "That all freemen" [of prescribed age, residence and property,] "shall be entitled to vote."

The Constitutional Amendment of 1835 read, "All free men" etc.

In the Constitution of 1868, the word "male" was inserted, and the freehold qualification omitted.

GEORGIA.

Constitution of 1798:

"The electors of members of the General Assembly shall be citizens and inhabitants of this State," [prescribing the qualifications.]

Sex not specified in the election law of 1811, nor in that of 1833.—(Prince's Dig. 1837, p. 197.)

The Constitution of 1798, as amended at different times, was in force until 1861, when it was superseded by a new one, containing the word "male." This also was in the Constitutions of 1865, and 1868, and is retained in the new Constitution of 1877.

SUFFRAGE A RIGHT OF CITIZENSHIP.—Sec. 1654 of the Code of Georgia of 1882, reads as follows:

"Among the rights of citizens are, the enjoyment of personal security, of personal liberty, private property and the disposition thereof, the elective franchise, the right to hold office [unless disqualified by the Constitution and laws], to appeal to the Courts," etc.

After this explicit declaration, unless women citizens were to have the right of suffrage, it was of course necessary to disfranchise them by express legal enactment. Accordingly Sec. 1656 reads as follows:

"Females are not entitled to the privilege of the elective franchise."

Thus expressly denying to one class of citizens, rights which, but for such denial, it is in Sec. 1654 conceded they would be entitled to.

These were the original 13 States. There remain to be considered yet three others.

VERMONT.

By the Constitution of 1793, it was provided that "every man" twenty-one years of age, etc. "shall be entitled to all the privileges of a freeman of this State."

By the law of a later date, "no person without a family" was to be allowed to vote.—(Laws of 1816, p. 165.) The voting was done at "freemen's meetings." This Constitution of 1793, has been at various times amended, and with the amendments, has remained the supreme law of the State, up to the present time. By an amendment in 1828, the privileges of freemen were referred to as before, without distinction of sex.

In 1839, the Legislature commenced inserting the word "male" in the election laws; a practice which has been since continued with great regularity. But these laws were unconstitutional. The word "man" in the constitution includes woman. A statute of Vermont itself provides that words importing the masculine may extend and be implied to persons of the feminine gender.—(Laws of 1880 for Construction of Statutes, Sec. 2.)

Vermont is the only State in the Union which has not the word "male" in the suffrage clause of its Constitution.

TENNESSEE.

Constitution of 1796, Art. III, Sec. 1: "Every freeman" etc. "shall be entitled to vote," etc. [Qualifications specified.] Const. of 1834, "Every free white man" etc. 1870, "Every male person," etc.

TEXAS.

Constitution of the Republic of Texas, Art. VI, Sec. 11:

"Every citizen of the Republic [of the requisite age and residence], shall be entitled to vote for members of the General Congress."—(Laws of Rep. of Texas, 1838, p. 16.)

Sec. 3 of Schedule:

"Every male citizen [otherwise qualified] shall be entitled to hold any office" etc.—(Ibid. p. 17.)

Every "male citizen" otherwise qualified could hold office, while every "citizen" otherwise qualified could vote.

When Texas was admitted into the Union, in 1845, the word "male" was placed in the State Constitution.

While a woman was a citizen of the Republic of Texas, she had the elective franchise. But as soon as, by the admission of Texas as a State, she became a citizen of the United States Republic, she was deprived of her right of suffrage.

In every one of the other 22 States, the word "male" has been in the State Constitution from the time of admission into the Union.

The words used in the old Charters and colonial laws for designating the qualifications of electors, are "persons", "inhabitants," "householders," "housekeepers," "freemen," "freeholders." These terms had, at common law a definite and well understood meaning, and were used without distinction of sex.

It has been shown in previous numbers of "The Law Times" that in England, by the old common law, the right of suffrage was a franchise attached to the freehold—that women as well as men were freeholders—that as far back as William the Conqueror, many women were enrolled among the inhabitants householders who were "burgesses" or voters—that before 1265, all freeholders had the right of suffrage—that women voted in the 16th and 17th centuries for members of Parliament—that in 1572, Dame Dorothy Packington, lady of the manor of Aylesbury, returned the two members, and, finally, that by the common law of England as it stood when it was adopted in this country, women had the right to vote upon the same terms with men, except that the vote represented by the freehold of a married women, must be cast by her husband.—(See the Article in the October number, 1887, by Hamilton Wilcox, of New York, and the article in July number, 1888, by W. S. Bush, of Seattle, Washington Territory.)

The case of Olive v. Ingram, (7 Mod. Rep. p. 263), turned upon the right of women to vote for sexton. It was considered of great importance. It was argued four times, and in 1739,

was decided by the Court in favor of the women. At that time women were not so generally voting for members of Parliament in England as formerly; but on the trial of Olive v. Ingram, Page, Justice, said, "I see no disability in a woman from voting for Parliament-man."—(7 Mod. Rep. p. 265.)

Lord Chief-Justice Lee reserved his opinion on that point, it not being necessary to decide it, but said: "By a collection of Hakewell's, in the case of Catharine v. Surrey, the opinion of the Judges, as he says, was, that a *feme sole*, if she has a freehold, may vote for members of Parliament."—(Ibid. p. 264.) At another time, during the argument he cited from "the great Hakewell" two other cases to the same effect: Coates v. Lisle, and Holt v. Lisle. Those citations show what the ancient common law was, and it was the ancient and not the modern common law which was adopted in this country.

The dictum of Lord Coke against the right of women to vote, in 4th Institutes, 5, is supported by no citations, and it must be borne in mind, that after the time when this passage is supposed to have been written, his resolution to the same effect was overwhelmingly rejected by the House of Commons, which body passed resolutions directly the reverse.—(Journal of House of Commons, Feb. 13, 1620; mentioned by Revising Barrister, T. Chisholm Anstey, in his judgment in favor of Jane Allen's claim to register as a Parliamentary Voter, reported in the London Law Magazine, 1868, volume 1.)

This opinion that women had no right to vote, is not found in Blackstone, or the other great writers on the ancient common law. Of fourteen authors whom I have consulted who have written special treatises on the Election Laws of England, but four express any doubt as to the common law right of the women to vote for members of parliament. These writers cite no decisions and could not cite any, because the decisions on the common law, had been the other way. They doubtless base their opinion on the passage in Coke. Lord Coke himself was evidently opposed to women voting, but he could not make the law upon the subject.

Those who are disposed to accept the 4th Part of the Institutes as good law throughout, would do well to consult

a work published in 1669, [London, folio], written by the celebrated William Prynne, entitled "Brief Animadversions," etc. "on the Fourth Part of the Institutes;" which this author says, were compiled by Lord Coke in his life-time, but published and reprinted "with some disadvantage" after his death. In this work, if we may trust to the title page, "the misquotations, mistakes of records, antiquities cited in them, [Institutes, 4th Book], are rectified," etc. Prynne says, in this volume, page 9, "The freeholders and burgesses of counties and boroughs elect and return knights and burgesses for all the commonaltie of the counties and boroughs." This statement is made without qualification; no mention being made of the exclusion of women.

Alexander Wight, in his "Inquiry into the Rise and Progress of Parliament," published in 1806, devotes a whole chapter to the disabilities which prevented a person from being placed upon the freeholders' roll as an elector, and sex is not among the disabilities. This is the more significant since he expressly mentions minors, criminals, etc., with whom women are generally classed when they are excluded.—(See Wight's Treatise, vol. 1, pp. 267–278.) While the legal right is thus impliedly conceded, history shows that the right was exercised by the women freeholders for several hundred years.

Selden says, in his "England's Epinomis," c. 2, s. 19, that in early times women voted, and assisted in the deliberations of the Legislature.

In the Lyme case, (2 Luders, 13), there is a list of burgesses, [freehold voters], of the town of Lyme Regis, in the 19th Eliz., 1577, which includes the names of three women:

"In the class entitled 'Burgenses sive liberi tenentes,' [a class of freehold voters], are the following names: Elizabetha filia Thomæ Hyatt, Crispina Bowden vidua, Alicia Toller vidua, Rob. Davie, Will Elsden, and the names of several other men."—(Luders' Rep. of Controverted Election Cases, vol. 2, p. 13.)

It is the common law of this very period, which was brought by the colonists into this country, and has been adopted by statute in the States of the Union.

We have seen that in New York and Virginia, the husband could vote for his wife's freehold. This was also the case in

Rhode Island.—(In Re The Voting Laws, 12 R. I. Rep. p. 586.) The same rule prevailed in Massachusetts. See the case of Windham v. Portland, where the Supreme Court say,

"A citizen, having, in right of his wife, a freehold of the annual value of three pounds, is a qualified voter."—(Windham v. Portland, 4 Mass. Rep. 387.)

If, then, this branch of the common law prevailed in this country, was not the other branch of it in force also, that which entitled the *feme sole* freeholder to vote in her own right? Or was the common law shorn of its elements of freedom by being transplanted from a monarchy to a republic?

We have seen that several of the States undertook to exclude the women by law, when there was no distinction of sex in the Constitution of the State. But all such acts were invalid. It has frequently been decided by the courts that the Legislature cannot add to the qualifications prescribed for an elector, so as to deprive the citizen of the benefit of the Constitutional guaranty of the suffrage.—(Page v. Allen, 58 Pa. State Rep. 338; Monroe v. Collins, 17 Ohio State Rep. 665, and other cases. See also Cooley's Constitutional Limitations, p. 602.)

We have seen that the women voted in New York and New Jersey, and that they were among the Charter Proprietors in New Jersey, Virginia and South Carolina.

We have seen that the right of suffrage was without distinction of sex,

In Massachusetts, for 160 years;—in Rhode Island, for about 180 years;—in Connecticut, for nearly 180 years;—in New York, for over 120 years;—in New Jersey, by the Constitution for 170 years, and by the laws for over 100 years;—in Pennsylvania, by the Constitution nearly 200 years, [by the laws for over 100 years];—in Delaware, by the Constitution for 130 years, and by the laws over 100 years;—in Maryland, nearly 100 years;—in Virginia, by Charter and Constitution 170 years, and by the laws nearly 100 years;—in South Carolina, for nearly 200 years;—in North Carolina, 150 years;—in Georgia, for nearly 100 years;—in New Hampshire, until the Constitution of 1784;—in Vermont, by law for nearly 50 years, and by the Constitution until the present time;—in Tennessee,

for over 70 years;—and in Texas, under the Constitution of the citizen Republic of Texas; thus remaining until, by admission into the Union, Texas became a part of the male Republic of the United States.

Next to negro slavery, the denying to the women their right to the elective franchise which they had in England by the common law, has been the great political crime of the age. And the Federal Government has made itself a party to the crime, by providing in the Reconstruction Act of 1867, (14 U. S. Stat. p. 428), that the ten States therein specified should be reconstructed by the male citizens only, and by substantially directing those States to put the word "male" in their new Constitutions.

It is high time that the men made restitution. In the States, by striking the word "male" from the State Constitutions. In Congress, without waiting for this, by submitting to the States an amendment to the Federal Constitution. Thus will our government, through its various agencies, recognize the right of the people to participate in the choice of those who are to administer it; and thus will it place itself in conformity with the principles upon which it was founded

Charles B. Waite.

Department of Medical Jurisprudence.

VALIDITY OF MOTIVE AS EVIDENCE OF SANITY IN CRIMINAL CASES.

By Jas. G. Kiernan, M. D., Chicago,

Late Medical Superintendent Cook County Hospital for the Insane; formerly of the New York City Asylum for the Insane; Member of the New York Society of Medical Jurisprudence; of the Chicago Medical Society and of the Chicago Medico-Legal Society.

There has been exhibited of late a tendency to regard the seeming existence and sufficiency of an alleged motive for a crime as proof positive that the crime was not the offspring of insanity. The average "expert" usually has two contrasted pictures framed in his mind, sanity and insanity, and any seeming existence of the former in a criminal act, has usually been held all sufficient to exclude the latter. The problem of feigned or alleged insanity is not approached from the scientific standpoint of suspense of judgment, but with minds prejudiced by *a priori* dicta.

At the outset, therefore, the question demands solution, whether the existence of a seemingly sane motive for a criminal act, proves that act to be the offspring of that motive and the criminal therefore a sane man? In dealing with the solution of this question the fact should be remembered that insanity is a mental state in which *bizarre* reasoning is constantly exhibited. Even the seemingly complicated and deliberate acts of the insane are found on analysis to be of very different character from what they appear to be.

Nor should the peculiarities of logic developed by the insane under such conditions, be surprising. Even the motives of the sane are often other than they seem. Men have committed

murders for which they have assigned definite motives and then have committed suicide. Arson has been committed, not for gain or revenge, but to call attention to the incendiary's ability as an officer, or his zeal or self-sacrifice as an employé, displayed in saving the goods from his employer's premises, which have just been fired by him. Since there is such psychological complexity in the motives of the sane, it must be obvious, from the cases already cited, that this is increased on entering the domain of the morbid.

The assaults made on the medical officers of insane hospitals, by lunatics previously adjudged insane, and confined as such, demonstrate four propositions, which have a direct bearing on the validity of a seemingly sane motive as an evidence of sanity.

First: Criminal acts committed by the insane often originate in seemingly sane motives. Second: Acts committed by lunatics from an insane reason are sometimes referred to a seemingly sane motive. Third: Acts committed by lunatics may be the distant outcome of an insane delusion, yet the act be the result of a strictly logical and seemingly sane motive. Fourth: The execution of decidedly insane projects may be interfered with by a healthy conception.

A very marked exemplification of the truth of the first proposition, is afforded by the attack made on a superintendent of the Williamsburgh † (Va.) Insane Hospital. He was a rough, gruffy, dictatorial man. An insane Virginia planter, of good family asked him very courteously, a question. The reply was: "Don't bother me with your nonsense." The question was repeated and answered with a taunt, whereupon the patient struck the superintendent with a chair, inflicting a wound which resulted in death. A similar attack was made on the general superintendent of the New York City Insane Hospital, under precisely the same circumstances. Had these two acts occurred in the public streets, and had the history of the patients been unknown, "experts" examining them would have judged that they were sane, because of the fact that the crime had a motive, and the conduct of the criminal was exact-

† Amer. Jour. of Neur. and Psych. Vol. II.

ly like that of sane people, under the same circumstances.

That the second proposition is valid is shown by the two following cases: An Irish patient who bore the Mongolian features of the Firbolgs, the Turanian pre-Aryan inhabitants of Ireland,† stabbed Dr. Parsons, then superintendent of the New York City Lunatic Hospital. To myself and another physician who had charge of him some years subsequent to the attack, he said he had stabbed Dr. Parsons because the latter refused haughtily to discharge him. His real motive was the delusion that Dr. Parsons was mistreating his sister. A patient‡ cut an attendant's head with a knife. He took advantage of the attendant being alone and carrying a tray full of utensils. After this and other attacks, he conducted himself so correctly that the question of his discharge was referred to the Commissioner of Lunacy, six months after the last assault. Twelve days subsequent thereto he had a slight attack of malaise, for which he was treated by the Assistant Medical Superintendent in a room where surgical instruments were lying about. The next day he made an attack on the same physician with a pointed piece of wood. This attack, he said, was due to an objection he had always had to the medical officers because of their treatment of him; that he would not injure the attendant, and that he knew what he was doing.

The following cases demonstrate the validity of my third proposition. Dr. Adams § of the Kalamazoo Insane Hospital, was stabbed by an insane patient under the following circumstances. The patient had suspicional delusions of persecution, of the type found in insanity, due to sunstroke. He also had the delusion that he had become a woman. Dr. Adams had detained several of his letters to a sister, considering them improper to be sent, and tried to induce the patient to write differently. The day previous to the homicide, the patient had handed the attendant a letter which the latter forgot to deliver that day. When Dr. Adams made his visit next morning, the attendant handed him the letter. He was immediately after met by the patient who inquired if he had mailed it, and, upon

† Amer. Jour. of Neur. and Psych. vol II.
‡ Sankey's Lectures on Mental Disease.
§ Amer. Jour. of Neur. and Psych. vol. II.

his replying in the negative, immediately stabbed Dr. Adams with a large pocket-knife, which he held concealed in his sleeve, with the blade open. He subsequently stated that he had had the knife in his possession about ten days, and had decided to kill Dr. Adams the night before. He also threatened to serve others in the same way were his letters not sent. The murder in this case was directly occasioned by the non-delivery of the letter. The reasoning was closely akin to that which would be exhibited by a sane, irritable man under similar circumstances, except that the homicidal outcome displayed more evidence of premeditation.

The attack made on Dr. Orange of the Broadmoor (England) Criminal Insane Hospital, † though originating in an insane delusion, was the direct outcome of ratiocination. The patient several years previously, fired a blank shot at the Master of the Rolls, for the purpose of obtaining justice. As this did not avail, he made up his mind, a year previous to the attack on Dr. Orange, that nothing less than "an act of murder would be sufficient to call public attention to, and deliver" him "from the conspiracy of which" he "was the victim." He made a request of Orange, respecting a letter which he wished to write, and while the docter was looking over some papers the patient gave him to read, the latter dealt him a terrific blow with a stone wrapped in a handkerchief.

As evidence of the validity of my fourth proposition, I present the famous case described by Dr. Fellowlees: ‡ For seven years the patient had been a laborious teacher and a presentor in church. The first demonstrable evidences of insanity were irritable suspicions. He was a great barrator in consequence of delusions of persecutions. He violently denounced the magistrates who dismissed his complaints, and was in consequence committed to prison. Here his insanity became demonstrable, and he was sent to an insane hospital, where he secreted a dagger to revenge himself. He was transferred to another insane hospital, and discharged therefrom after a short residence. In consequence of continued annoyances by hallucinated voices, call-

† Journal of Mental Science, July, 1882.
‡ Edinburgh Medical Journal, 1862.

ing him nicknames, and his failure to obtain "justice," he concluded he must take the law into his own hands. He collected weapons and fortified his house. He issued a proclamation that any attempt to take him would result in swimming in blood. He was committed in consequence to the Morningside Insane Hospital, where he was under the care of Drs. Skae and MacKinnon for twenty years.

He frequently attempted to murder them, under circumstances evincing great deliberation, cunning and premeditation. He had much difficulty, he said, in restraining himself from rising in the hospital chapel and braining Dr. MacKinnon with a chair.

For months he occupied himself in the manufacture of a lead slungshot with which he struck his attendant on the head.

His delusion of persecution, it was later shown, arose from the fact that he could not gain a hearing for his extravagant invention including the discovery of perpetual motion. In this case there was the clearest evidence of the error of the dictum that insane projects are never affected by outside circumstances, for this man, evidently a pious christian, was only prevented from braining Dr. MacKinnon in the hospital chapel by the sanctity of the place and occasion.

The cases I have cited demonstrate the four propositions laid down and afford a full basis for concluding that the question of motive should be the last thing considered in the diagnosis of insanity in a criminal; since the insane may commit crimes seemingly from sane motives; since the insane may commit crimes due to a logical ratiocination, based on delusive conceptions; since he may commit crimes based on insane motives yet allege for the same seemingly sane motives; since even an imperative conception which urges a lunatic to immediate action may be interfered with by a healthy conception thus producing an apparent vacillation in the lunatic's conduct. In other words motive is not *per se* a valid evidence of sanity in a criminal.

Editorial Department.

NOTES OF TRAVEL.

Crossing the Atlantic—Hamburg—Denmark—Norway.

Having in former numbers of the Times given sketches at random, of travel in various countries, I will now go back and touch upon the voyage over, and the countries first visited. Thus will these notes preserve their desultory character; for I do not wish them to degenerate into a mere chronological journal.

The sea voyage will be touched upon merely, for, to an American it has now become a very common thing. One may almost as well describe a journey to New York or Boston, as to London or Paris.

On the 7th of June, 1884, we sailed from New York in the steamer Westphalia, of the Hamburg line. It was a good German steamer, and as we had no bad weather to speak of, of course we had a jolly time; for the pleasure of an ocean trip, it is scarcely necessary to say, depends almost entirely upon the weather. I enjoyed very much the views in the English Channel, which was full of vessels of every description. Sometimes 100 sail could be counted, all in full view. The trip was not a rapid one. We were twelve days reaching Hamburg. The country on each side of the river, as we approached Hamburg, was handsome. Blankanose is a beautiful village, on the left bank as we go up the river. It is built in a thick grove. In approaching it from the road, the houses must be nearly all out of sight. But as the village is on the hill side, and the trees but little above the houses, the roofs could all be seen from the river. Being composed of slate, of a grayish color, they presented a lively contrast to the bright green of the foliage, and the whole seen in the evening, with the lights flashing out here and there through the leaves, formed a picture, at once unique, picturesque and beautiful—a refreshing relief to the eye, after gazing so many days upon the blue expanse of ocean.

About nine o'clock in the evening arrived at Hamburg, and was soon being driven, for the first time in my life, over the stony streets of a European City. Hamburg is a beautiful city, with trees of luxuriant verdure. The streets are narrow but very clean, and the city is well supplied with parks and bodies of water.

At the St. Petersburg Hotel, where I stopped, I ate a beef-steak that still lingers pleasantly in the recollection. Then visited the panorama of the battle of Worth, and the art gallery, and soon after made arrangements for continuing my journey.

Remaining but two days in Hamburg, I proceeded by rail to Keil, thence by boat to Korsor, on the south coast of Denmark, thence by rail again to Copenhagen. This last portion of the trip was all the way through a handsome country. The railroad runs through the heart of the peninsula, with seven branches extending toward the sea. The towns we passed were small, the trees were small, and the animals seemed small. This last appearance may have been caused partly by the vastness of the sea I had left so lately.

June 21, in the evening of the same day on which we had left Hamburg, arrived at Copenhagen, and put up at the Dagmar Hotel, which I can recommend. Intending to stay a number of weeks in this City, I looked about, and was so fortunate as to find a suite of elegant rooms belonging to a Professor in the University, who was gone from the City, and which I occupied in his absence.

I had a pleasant stay in Copenhagen, and improved the time in extending my acquaintance with Danish literature. While here had an interview with Herr Sverdrup, the Prime Minister of Norway. He could not speak the English language, but was considerate enough to speak his own slowly. I asked him the question direct, if he thought there would ever be a republican form of government in Norway. He did not give a direct answer, but proceeded with a full history of events leading up the situation at that time, his object being to show that the Government was then imbued with republican principles, and that the grade of republicanism represented by the Government was, at least for the time being, satisfactory to the people.

I was on my way to attend the expected trial of Bjornson at Christiania, for denunciation of the King. Upon arriving at Copenhagen, was informed that a compromise had been effected between the liberal and conservative parties, one condition or incident of which was, Bjornson's discharg It is but just to him, however, to say, that he was no party to this compro-

mise, but ever afterward denounced it.

The relations between the King of Denmark, Christian IX, and his parliament, were at that time much strained, and had been for years. The chief cause, or at least the one upon the surface, was his refusal to dismiss his prime minister, who was very distasteful to the lower house. The Legislative Assembly of Denmark consists of two bodies; the lower, the Folkething, had at that time 101 members, elected by the people. An elector must be 30 years of age. There was no property qualification, except that the elector must not be insolvent, and must have a domicil of his own. About one seventh of the people are voters.

The Landsthing consisted of 66 members. 12 were appointed by the King. The others were elected by the people indirectly. That is to say the electors were elected. There were different classes of first electors, this part of the system being somewhat complicated. The qualification depends upon the amount of taxation, and in the cities, on the amount of income. In the City of Copenhagen, there are two classes of voters. One class is the same as the electors of the Folkething. The other must have an annual income of 3,000 crowns; (about $840.)

The Supreme Court consisted of 13 members, who were appointed by the King. The judges of the lower court were appointed in the same way. The salary of the supreme judges was 8,000 kronors; (about $2,240.) They were appointed for life, except that the King could retire them after they had become 60 years of age.

All the judicial proceedings in the lower courts were in writing. In the Supreme Court only was there oral argument. There are three grades of courts—courts of the first, second and third instance; but in Copenhagen only two. The Superior Court or Court of Second Instance, was held by five judges, sitting together. Their system of law is not the civil law of the continent, nor the common law of England, since it is as old as that or older. The same principles of right and justice underlie it, and upon these the advocate falls back, upon failure of adjudicated case or legislative enactment. The latest complete codification of the laws is that of 1683, under Christian V.

Copenhagen is a handsome city, and was then being built up rapidly in some quarters, in the modern style of architecture.

On the 6th of August, 1884, I took the steamer "Drouning Looise" (Queen Louisa—she was queen of Oscar II, King of Sweden and Norway) for Christiania. This trip was in every way pleasant and agreeable. The weather was fine, and the sea exceptionally calm. Much of the time the

first day, we were in sight of Denmark.

Early the next morning we approached the coast of Norway. Here are the bold and rocky mountains, with scanty timber, and fringed on the sea with neat villages, the houses of which are nearly all painted white. Every house, however old, appears to have been newly painted within two or three years.

About twelve o'clock we came in sight of Christiania. We had been for some time steaming along through "Christiania Fjord." Now we are in the midst of the Fjord, and as we approach Christiania, one of the most beautiful sights is presented that I ever beheld.

All around, the view is bounded by mountains of a rolling appearance, rearing their huge backs in such a manner as well might countenance the tradition that giants lay sleeping beneath them. In the intermediate distance, rocky islands, on some of which are the houses of fishermen. The weather is clear and beautiful, but there is a slight, hazy mist over all, through which the bright rays of the sun are struggling for recognition, giving a dreamy splendor to the scene.

C. B. W.

IN MEMORIAM.

WILLIAM BRACKETT.

Horace says, that even Time himself cannot deprive us of pleasures once enjoyed. This was a favorite quotation of the poet by him whose name stands at the head of this article; and as the recollection comes back to the mind there come with it a host of pleasant memories of my old friend, my business partner, and for many years my intimate companion.

William Brackett was a man who will be long and pleasantly remembered by whose who knew him, and the most pleasantly and affectionately by those who knew him best.

He was born in Cherry Valley, Otsego County, New York, in 1820. He was educated at Harvard College, Class of 1843, and in the Harvard Law School. Blessed by nature with rare mental endowments, these were disciplined by a thorough education, and enriched by stores of classical learning.

He practiced law in Avon, New York, where he was a partner of W. H. C. Hosmer, the poet. He went to Rock Island in 1848, and in 1850, formed

the partnership of Brackett and Waite. This firm had a large real estate practice in Rock Island and adjoining counties, and in 1853, the partners came to Chicago, still remaining together as a law firm.

About the year 1855, he visited Europe, remaining a year, and enjoyed himself as only a man of his tastes and acquirements could. He was in California several years, and made a number of trips to the Rocky Mountains, the scenery of which he loved with a never dying enthusiasm.

His health was delicate for a number of years, and with the view of benefiting it, he spent several months in Florida. His last excursion was to Yellowstone Park, in 1886. He wrote many articles descriptive of life, scenery and hunting in the Rocky Mountains, which were published in "The American Field." He was an excellent writer, having a style clear, pure and classical. His article in the LAW TIMES, of July, 1887, entitled "Recollections of Lysander Spooner," may be taken as a specimen.

He was warm hearted, and devoted to his friends, even to the point of self sacrifice.

He was a member of the "Chicago Literary Club," also of "Unity Club," D. C., of which Garfield was President. He there read a very able paper entitled "History as a Science." He was a member of the Chicago Philosophical Society, and read several papers before that body, one of which, an essay on the writings of Voltaire, attracted much attention, and was widely quoted and copied.

Last winter, while in Florida, he had a slight stroke of paralysis, from which he seemed to recover. But another stroke came June 7, last, which affected the base of the brain, and he died at his home on Elm Street, in this City, June 14, 1888. He left a widow and one son. By his request his remains were taken to Rock Island for burial, and rest in Chippianock cemetery in sight of the Mississippi River, a most beautiful and romantic spot.

Mr. Brackett was a good and thorough lawyer, but his ambition was divided between his profession and literary pursuits. A friend, (Dr. Rowe), says of him: "He was a man of fine literary taste and acquirements, a most devoted student of nature, particularly in the afternoon of his life, a charming writer, but a still more charming companion, and was certainly one of the youngest men in his buoyant, hopeful feelings and pure enthusiasm that we ever met."

Friend and companion, "hail and farewell."

C. B. W.

THE LAW TIMES.—Rev. Samuel Davidson, LL. D., of London, the celebrated author of "Introduction to the New Testament," etc., says in a letter lately received:

"I have read some of the articles in your 'LAW TIMES' with interest, particularly those touching upon medical jurisprudence. But there is a wide field beyond."

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BOOK REVIEWS.

THE NATIONAL REVENUES: A COLLECTION OF PAPERS BY AMERICAN ECONOMISTS. EDITED BY ALBERT SHAW, PH. D., AUTHOR OF "CO-OPERATION IN A WESTERN CITY," "ICARIA," "A CHAPTER IN THE HISTORY OF COMMUNISM," ETC. CHICAGO, A. C. MCCLURG & CO., 1888. Price $1, paper cover 50 cents.—A handbook, full of political information, and of especial value in this campaign. The facts incorporated into the volume are made the basis of many thoughts and suggestions from some of the most noted economic writers of the day:—Prof. Henry C. Adams, of the University of Michigan, Prof. Ely of Johns Hopkins University, Prof. Robt. E. Thompson, of the University of Pennsylvania, Prof. Morse of Amherst College, Prof. Hadley, of Yale, and others. The principal problem discussed is, the best disposition to be made of the surplus revenue.

The opinions of the writers may be epitomized thus:

The contributors are all in favor of some revision of the revenue system;—in favor of changes which in their opinion will tend to lessen and to equalize the burdens of taxation;—the danger is urged of having the ordinary revenue considerably larger than the ordinary expenditure;—there should, however, be a maximum revenue yielding point, above the ordinary revenue, so that it could be resorted to in case of emergency;—for this reason the internal revenue system should be retained as a safeguard against falling off of customs duties;—some favor the distribution of the surplus among the States, others the purchase in the open market, of the time bonds, the only ones now outstanding, others advocate the policy of large expenditure for public improvements;—the writers agree that customs duties must remain, at least for an indefinite period, the principal source of ordinary revenue;—as to the tax on whiskey and tobacco, there is a wide range of opinion; and finally there is a substantial unanimity in the opinion that the protective idea should be present, at least incidentally, in the future arrangements of our tariff schedules.

Every citizen should have this little volume for reference, in relation to the interesting questions now under public discussion. No matter what his politics, he will find much of interest, and, unless he be an extremist, much in accordance with his own views.

IS PROTECTION A BENEFIT? A PLEA FOR THE NEGATIVE. BY EDWARD TAYLOR. CHICAGO, A. C. MCCLURG & CO., 1888. Price $1.—This work, as the title sufficiently indicates, has more of a political party complexion, at the present time, though it may not have been so intended, than the one above mentioned. We could not review it at any length, without taking part in the political controversies of the day; something which we have neither the time nor inclination to do in this place. We shall content ourselves, therefore, with saying, the book is well written, and we recommend it to those of our readers who are opposed to the protective tariff system.

THE VIRTUES AND THEIR REASONS; A SYSTEM OF ETHICS FOR SOCIETY AND SCHOOLS. BY AUSTIN BIERBOWER. GEO. SHERWOOD & CO. CHICAGO; JUNE, 1888.—Moral education in our schools is one of the most important subjects that interest the public of to-day. How best to bring about a proper training in this respect, is a problem which interests as well as perplexes our most prominent educators.

Statistics fail to show that education diminishes crime to the extent that might naturally be expected. In seeking for a reason for this state of affairs, much of the blame has been attached to our schools, thereby reflecting discredit upon our public school system. Instead, however, of our schools and instructors being to blame, the fault lies rather with the existihg diversity of opinion on religious matters; resulting in controversy in regard to the use of the bible in the schools. Prof. Bierbower's new book, "The Virtues and their Reasons," is a text book on the subject of morals, and supplies the demand which has long existed in the minds of all thoughtful teachers. It is written in a clear, concise manner, and while eminently suitable for advanced schools and colleges, may yet with the aid of an intelligent teacher, be made clear to the youngest scholar. Absolutely free from dogmatism, it presents the virtues and their reasons in a manner that can be comprehended, and shows how they can be practiced alike by all.

That happiness follows virtue and that misery comes in the wake of sin and crime, is made clear and emphasized in every page of this most valuable work.

Prof. Bierbower's book is intended not only as a text-book for schools but also as a study of morals for the general reader. It is a thorough and searching exposition of the law of cause and effect, and cannot be too highly recommended to all students of practical philosophy.

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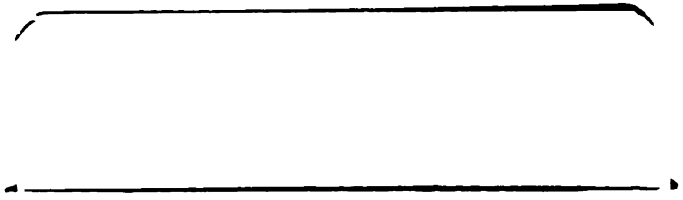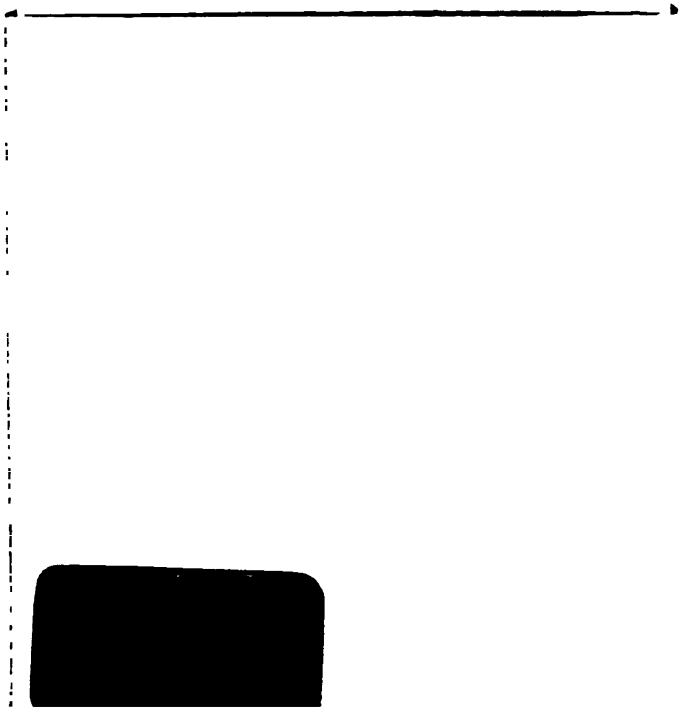
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